



# UNCLAIMED MINERAL PROCEEDS COMMISSION REPORT

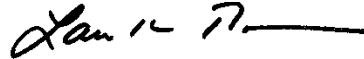
DECEMBER 2014

**December 31, 2014**

**The Honorable Rick Perry, Governor  
The Honorable David Dewhurst, Lt. Governor  
The Honorable Joe Straus, Speaker, Texas House of Representatives**

**Pursuant to HB 724, 83<sup>rd</sup> Legislature, Regular Session, 2013, the  
following is the Report of the Unclaimed Mineral Proceeds Commission.**

**Respectfully submitted,**

A handwritten signature in black ink, appearing to read "Lance K. Bruun", followed by a horizontal line.

**Lance K. Bruun,  
Presiding Officer**

**Executive Summary**  
**Recommendations for Legislative Action**  
**BY**  
**TEXAS UNCLAIMED MINERAL PROCEEDS**  
**COMMISSION**  
**PURSUANT TO**  
***THE DIRECTIVES IN HB724, 83<sup>rd</sup> Legislature, Regular Session, 2013***

The Unclaimed Mineral Proceeds Commission (the Commission) was organized under the directives of HB 724 as follows:

**“The Unclaimed Mineral Proceeds Commission is created to study and provide recommendations to the legislature regarding the distribution of mineral proceeds that are:**

- 1. derived from and original land grant;**
- 2. owned by a descendant of an original grantee;**
- 3. unclaimed and presumed abandoned under Chapter 72, 73, 74 or 75, Property Code; and**
- 4. delivered to the comptroller under Chapter 74, Property Code.”**

Critical to the Commission’s work is the definition of “**original land grant**” found in HB 724, Section 1 as:

**“... The initial conveyance of real property in this state, as evidenced by a certificate, title or patent from either:**

- 1. the Crown of Spain;**
- 2. Mexico;**
- 3. the Republic of Texas; or**
- 4. this state.<sup>1</sup>”**

In other words, the term is broadly defined to include not only Spanish and Mexican land grants, but also land grants originating from the Republic of Texas. Notwithstanding this broad definition, the primary focus of the Commission’s deliberations has been directed towards Spanish and Mexican land grants. The legislative charge is considerably narrow because unclaimed and presumed abandoned mineral proceeds must have been delivered to the Comptroller for the Commission to recommend methods or procedures to adjudicate claims to

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<sup>1</sup> Land grants initially conveyed from the Crown of Spain are generally considered those granted from 1720 through 1821. Those conveyed by the Republic of Mexico were granted from 1821 through 1848. Those conveyed by the Republic of Texas were granted from 1836 through 1845. And those conveyed by the State of Texas were granted from 1845 to the present.

the Legislature. No unclaimed and presumed abandoned mineral proceeds that were not reported to the Comptroller are involved; however, much testimony was heard on the existence of such claims and issues that are not the authority of the Commission.

At the call of Lance Bruun, Presiding Officer, the Commission met from January 2014 through December 2014 to carry out its delegated task.<sup>2</sup> An historic source of conflict, angst, confusion and debate for some individuals since Texas was created, distribution of unclaimed and presumed abandoned mineral proceeds as defined in the legislation soon became a larger task than most of the Commission members originally expected.<sup>3</sup> Throughout the initial meetings members discussed and sought specific clarification of existing law on the subject to guide them in their charge. Soon into the hearing process, the Presiding Officer appointed Members Burton, Ramos and Rangel, recognized as authorities in this field of law, to research and report on the current status of the law and treatment of mineral property in Texas.<sup>4</sup> Mr. Bruun directed attention to other scholarly publications, including Galen Greaser's *New Guide to Spanish and Mexican Land Grants in South Texas* published by the Texas General Land Office (GLO), as well as cases brought in the Courts of Texas by those alleging to be inheritors of mineral interests from Spanish and Mexican land grants.<sup>5</sup>

The Commission's hearings were punctuated with evidence introduced by numerous individuals who testified:

- That past injustices were committed by all parties, replete with personal pleas for the Commission to right those wrongs;
- That guidelines and equitable remedies are needed, citing evidence which witnesses believed tended to prove unscrupulous, unethical, and even criminal behavior by certain land and mineral interest owners originating from the early days of Spanish rule, the Republic of Texas, and the State of Texas;<sup>6</sup> and
- Through invited testimony by representatives of the Texas Comptroller of Public Accounts, the General Land Office, and the Railroad Commission of Texas examining each agency's authority and responsibility regarding unclaimed mineral proceeds, unclaimed lands, alleged "unclaimed or abandoned oil and gas wells," procedures currently in place to claim, report, and secure a claim, and the adequacy of funding for successful claimants.

**However, the scope of HB 724 restricts the Commission from recommending reparations or restitutions for past injustices or for specific resolution of individual cases. While the bill**

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<sup>2</sup> For detailed hearing summaries, see Exhibit 1 – Minutes of the Unclaimed Mineral Proceeds Commission.

<sup>3</sup> For a list of invited and public witnesses by date, see Exhibit 2 – Invited and Public Testimony.

<sup>4</sup> Trace Burton, Donato Ramos, Jr. & Jaime Rangel memorandum to Unclaimed Mineral Proceeds Commission, 25 April 2014, Legal Issues Related to the Ownership of Minerals in Texas.

<sup>5</sup> *Cox v. Robinson*, 150 S.W. 1149 (Tex. 1912); *Cowan v. Hardeman*, 26 Tex. 217 (Tex. 1862); *Jones v. McFaddin*, 382 S.W.2d 277 (Tex. App.—Texarkana 1964); *Aguillera v. The John G. and Marie Stella Kenedy Memorial Foundation*, 162 S.W.3d (Tex. App. 2005, Corpus Christi; pet. denied).

<sup>6</sup> "Unclaimed Mineral Proceeds Commission Report," 2014, Unclaimed Mineral Proceeds Commission, 3-4. Hereafter referred to as the "UMPC Report" for citing discussions, summary conclusions, or other information contained within the Commission's full report to the Legislature as required by Texas HB 724, 83<sup>rd</sup> Leg., Reg. Sess. (2013).

**does not prohibit the Commission from recommending further study of issues not contemplated in the bill, the primary objective is to study and provide recommendations to the Legislature concerning the distribution of mineral proceeds that are BOTH “owned by a descendant of an original grantee” AND delivered to the Comptroller under Texas Property Code Chapter 74. The single qualifying threshold for any claimant is that the provable descendant must unequivocally show OWNERSHIP in the mineral or royalty interest.** Yet, even after full discussion from the members, some individual witnesses persisted in seeking resolution of their own claims.

Even before members were aware of all of the problems related to unclaimed mineral proceeds early testimony, continuing through the final meetings, often devolved into personal attacks against the Commission and its motives.<sup>7</sup> Members of the Commission regret these personal statements and find no basis for them other than to classify them as a result of years of frustration held by individuals who may have been led wrongly to believe the State of Texas could right past injustices within this particular Commission.

**ISSUE ONE:** Before any other findings could be established, there were preliminary issues of the law that confronted the Commission: 1) How is ownership of a descendant established; and 2) How is a mineral or royalty interest established?

**The Commission finds: That the failure of the descendant to prove ownership of an identifiable mineral or royalty interest ends the descendant’s right to recover unclaimed mineral proceeds relating to that interest. The inference of a family name having occupied a certain tract or land grant is insufficient proof to establish a claim of ownership.**<sup>8</sup>

**ISSUE TWO:** In some instances the Commission confronted related misstatements of the law, most of which have been built up over years, or advanced by advocates for claimants that required correcting or clarifying.

**The Commission finds: That the major misstatement of Texas Law by an attorney for many of the claimants has contributed to the wrongful application of the law, and may have led to the creation of this Commission.**<sup>9</sup>

**Utilizing several scholarly papers, the Commission determined that the settled law in Texas is as follows:**

**When a person sells a piece of land and no mention is made of the minerals contained, the rights pass on to the purchaser. The reservations of minerals must be made by clear language and the courts do not favor reservations by implication.**<sup>10</sup>

**In doing so, members emphasize that the following statement is untrue:**

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<sup>7</sup> UMPC Report, 23.

<sup>8</sup> UMPC Report, 24. See also discussion of testimony and documents provided by Eileen McKenzie Fowler, 4-7, 13.

<sup>9</sup> UMPC Report, 5-7. Commission discussion with Ms. Fowler regarding the legal basis for descendant claims and the concept that mineral rights were relinquished to owners of the soil and their descendants forever.

<sup>10</sup> Burton, Ramos & Rangel memorandum and UMPC Report 7-13.

**“Normally under Texas property law.....in the case of land grants, if no mention is made of the mineral or the transference of the mineral by sale or conveyance of the land, the minerals are retained by the seller and pass to his or her heirs.”<sup>11</sup>**

**ISSUE THREE:** The 1866 Amendment to the Texas Constitution released all mines and minerals previously claimed or owned by the State to the owner of the soil, subject to taxation, and reserved to the State Coastal lands not in the hands of other individuals or entities, unless the Legislature might direct. Debate ensued over the question of the “retrospective” nature of the 1866 Amendment, that is, whether the owners of land granted by the successive sovereigns (Spain, Mexico, Republic of Texas and the State of Texas) before the adoption of the amendment would be given complete ownership of the minerals on their land. Relying upon the definition of “retrospective” in the case of *Cox v. Robison* (Tex. Sup. Ct., 1912) and *Cowan v. Hardeman* (26 Tex. 217; Tex. 1862):<sup>12</sup>

**The Commission finds: There is no authority that the 1866 Amendment released minerals to all previous owners of the soil or to anyone other than the owner of the soil as of the date of the 1866 Amendment. Further, the result is that the State of Texas can enact laws that reserve minerals from any conveyance of public lands, provided nothing will impair vested rights from the reservation.**

**ISSUE FOUR:** Determining ownership of minerals that are the subject of a mineral rights claim is not a charge found in HB 724 except as it relates to the procedures required and recommended by the Commission.

**The Commission finds: That procedures leading to the adjudication of title is not the province of the Commission, but the final determination of title is a matter for a Texas Court, a constitutionally created state agency, or an administrative body, created by the Legislature, the final judgment for which lies in the Texas Courts.**

**ISSUE FIVE:** Other information presented by numerous witnesses had interesting authorities, but none sufficient enough to be cogent evidence to lead the Commission to proscribe methods to prove up unclaimed mineral proceeds claims.

**The Commission finds: That it has not received any reliable evidence that unclaimed and presumed abandoned mineral proceeds reported to the Comptroller are accumulating on or from original Spanish and Mexican land grants in South Texas; that voter registration lists of Spanish or Mexican surname voters and taxpayers within a convenient land grant area alone are not evidence of current ownership of unclaimed mineral proceeds; that older mineral deeds and oil and gas**

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<sup>11</sup> George Farias, *HEIRS Brochure*, Heirs Enforcing Inheritance Rights, <http://www.eileenmckenziefowler.com/heirs/HEIRS-BROCHURE.pdf>. This statement was discussed at length during multiple Commission hearings and appears to be the foundation for descendant claims against unclaimed mineral interest proceeds. See UMPC Report, 5-7, and the Burton, Ramos & Rangel memorandum.

<sup>12</sup> Burton, Ramos & Rangel memorandum.

**leases executed by Spanish surname individuals alone are not evidence of current mineral ownership or unclaimed mineral proceeds.<sup>13</sup>**

**ISSUE SIX:** The Railroad Commission of Texas (RRC) and a private company selling records gleaned from the RRC were named by interested parties and witnesses as a source of substantial evidence for lease names and mineral ownership information. After testimony from the Chief Hearings Examiner for the RRC, the Commission determined that lease names or land owner names are not necessarily associated with complete and full disclosure of mineral interest owner names. Contrary to claims made by witnesses, the RRC is not responsible for maintaining ownership information or information on “unknown and unclaimed” wells.<sup>14</sup>

**The Commission finds: That the RRC, having been charged with preventing waste and protecting correlative rights, does not adjudicate title disputes or boundary disputes; nor do its records comfortably and directly correlate to the name or names of mineral interest owners or the lack thereof; nor does the RRC maintain records of “unknown ownership.” A private company depending upon RRC records essentially comes with the same scope of influence, but without government protection.**

**ISSUE SEVEN:** In mineral rights cases, claimants have attempted to use declaratory judgments to establish legal inheritance or ownership of mineral interests. Although genealogical lineage may be established by declaratory judgments, such judgments are too broad to establish specific ownership through various means (will, sale, gift, mineral severance). The law will not presume the amounts of claims are significant compared to the cost incurred in proving them to the courts and the parties involved.<sup>15</sup> The mere inference of names similar to existing claimants in a Spanish or Mexican land grant is not valid proof that any mineral estate within the grant did pass or is entitled or is owned in the present by those individuals.

**The Commission finds: That, in the final analysis of laws affecting Spanish and Mexican land grants and the application of procedures for the Commission to develop, Texas real property laws, including the statute of limitations, apply equally to all Texas citizens. This includes those who were Mexican citizens holding land in Texas prior to the Texas Revolution, so that they are subject to the same court proceedings including foreclosure, execution sales, trespass, adverse possession, and other nongovernmental acts.<sup>16</sup>**

**The Commission is charged with devising equitable, simple, inexpensive and clearly understandable procedures to resolve claims within these boundaries. The Commission is not charged with determining or setting aside funds to pay such claims because that is the function of the Legislature through the constitutionally mandated Legislative process.**

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<sup>13</sup> UMPC Report, 13. Ms. Fowler and other witnesses provided extensive documentation showing historical ownership of property. Ownership of land at a particular time in history is not sufficient evidence to prove current ownership of mineral interests or unclaimed mineral proceeds.

<sup>14</sup> UMPC Report, 13-15.

<sup>15</sup> Judge David Peebles to Unclaimed Mineral Proceeds Commission, 25 April 2014, Draft Order Concerning Declaratory Judgments. See also UMPC Report, 16-17.

<sup>16</sup> UMPC Report, 17-18.

**ISSUE EIGHT:** Public testimony referred the Commission to New Mexico laws governing land grants as a possible model for constructing a response to HB 724. However, the Texas experience is different, because unlike New Mexico, Texas retained title to its unappropriated vacant lands when it became a state. The task of determining land grants fell to Texas as a state in control of its own lands; unlike New Mexico, the Federal Government had little investigation or determination of Texas land grants.<sup>17</sup>

**The Commission finds: That the experience with Texas’ land system and its adjudication of claims prior to today have evoked little dissatisfaction when adhered to and understood. The Commission finds that the New Mexico experience has little merit in scope or guidance for the adoption of rules and procedures to determine unclaimed minerals in Texas.**

## CONCLUSIONS AND RECOMMENDATIONS

### I. EXISTING PROCEDURES

The Commission heard extensive testimony regarding current law and the Comptroller’s procedures governing unclaimed property, including specific information on mineral proceeds recovery and the funding for claims established in the General Appropriations Act.<sup>18</sup> Allegations that the Comptroller’s office had not correctly performed statutorily required obligations were examined and proved incorrect.<sup>19</sup> Certain areas of the program’s administration related to mineral interests may be improved, however. With extensive time and documents submitted, the Commission finds as follows:

- **The current statutory reporting requirements for mineral proceeds are consistent with the reporting requirements for other jurisdictions.**
- **The payment and use of unclaimed funds, including mineral proceeds, to general revenue is in compliance with Texas law, and is consistent with the use of similar funds by other jurisdictions.**
- **Since the current reporting requirements are “owner-centric” rather than property-centric, it is not possible to match the Comptroller’s existing data with any particular original land grant as defined in HB 724.<sup>20</sup>**
- **Oil company holders are substantially complying with, and the Comptroller’s office is adequately enforcing, the current unclaimed property reporting requirements. Other measures can be adopted by the Legislature that would resolve the conflicts of ownership and unclaimed property reporting requirements.**

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<sup>17</sup> Jonathan Steinberg memorandum to Whitney Blanton, 19 April 2014, New Mexico Land Grant Committee and Council. See also UMPC Report, 20-22.

<sup>18</sup> UMPC Report, 28-36. See also Exhibit 7 – Proof of Ownership Requirements, and Exhibit 8 – Unclaimed Property Fiscal Overview.

<sup>19</sup> Don Tomlinson analysis to the Land Grant Justice Association, 24 June 2010, Analysis of Unclaimed Mineral Proceeds Dataset from Texas Comptroller’s Office. Provided to the Commission by Eileen McKenzie Fowler, 28 February 2014. For a detailed summary see UMPC Report, 26-27.

<sup>20</sup> UMPC Report, 30.



- **The Comptroller by rule could prospectively require oil company holders to report property-specific information for unclaimed property. Such information, including the lease, property or well name, and the county in which the lease, property, or well is located, is already required for check-stub reporting under Natural Resources Code Section 91.502.**
- **The probable reason the “descendants” have been and will continue to be unable to “match” to the Comptroller’s data set is that few, if any, are current owners of the minerals or royalties in any lease, property or well from which the mineral proceeds derive.**
- **Under the current General Appropriations Act, the Comptroller is only authorized to pay “Legitimate Claims for Unclaimed Property.”<sup>21</sup>**

## **II. UNCLAIMED MINERAL PROCEEDS CURRENTLY HELD BY THE COMPTROLLER**

HB 724, Section 3, directs the Commission to include in this report “the amount of unclaimed original land grant mineral proceeds delivered to the Comptroller that remains unclaimed on December 1, 2014.”

As noted above, the Commission finds that under current reporting requirements and practices, it is not possible to match existing unclaimed mineral proceeds held by the Comptroller with any particular original land grant.

The Comptroller’s office provided the following data for unclaimed mineral proceeds currently held by the Comptroller:<sup>22</sup>

Total reported	\$609 million
Returned to rightful owner	\$199 million
Available to claim	\$410 million
Reported without owner identifying information (171 properties)	\$281,011.36
Reported in the aggregate (441 properties) <sup>23</sup>	\$666,067.66

<sup>21</sup> UMPC Report, 94, Exhibit 8 – Unclaimed Property Fiscal Overview.

<sup>22</sup> For detailed information on Comptroller accounting for unclaimed property and unclaimed mineral proceeds, see UMPC Report, 28-36.

<sup>23</sup> Tex. Property Code § 74.101(d). Amounts due that individually are less than \$50 may be reported in the aggregate without furnishing any of the required owner identification information otherwise required by Property Code § 74.101(c).

### III. ADOPTED RECOMMENDATIONS<sup>24</sup>

After careful consideration of written and oral testimony presented throughout the Commission's hearings, members met on December 19 to formally discuss and adopt recommendations.<sup>25</sup>

Pursuant to HB 724, Section 3, the Commission has adopted the following recommendations for the consideration of the 84<sup>th</sup> Legislature:

1. That the Comptroller by rule if possible, or the Legislature by statute if necessary, prospectively require oil company holders to report property information required to be included on "check stubs" pursuant to Texas Natural Resources Code Section 91.502, including the lease, property or well name, and the county in which the lease, property, or well is located for each well for which mineral proceeds are reported and remitted to the Comptroller as unclaimed property.
2. That the Comptroller by rule if possible, or the Legislature by statute if necessary, prospectively require oil company holders to report the survey name, the General Land Office abstract number from Railroad Commission Form W-1 (Application for Permit to Drill, Deepen, Plug Back or Re-Enter, item 10 on current form), and the GPS coordinates from Railroad Commission Form W-1 for each well for which mineral proceeds are reported and remitted to the Comptroller as unclaimed property.
3. That the Legislature amend Texas Civil Practices & Remedies Code Sections 64.091, Receiver for Mineral Interests Owned by Nonresident or Absentee, 64.092, Receiver for Contingent Interest in Minerals, and 61.093, Receiver for Royalty Interests Owned by Nonresident or Absentee to:
  1. Require the applicant for a receivership to furnish the Comptroller with a certified copy of any judgment granting a receivership;
  2. Provide that all payments to the Clerks of Court resulting from any such receiverships be subject to the unclaimed mineral proceeds reporting requirements of the Texas Property Code,<sup>26</sup> and
  3. For receiverships filed prior to the effective date of this change, that the Clerks of Court of all counties in the State of Texas report, in a form prescribed by the Comptroller, receivership proceedings filed beginning January 1, 1986 to the present.
4. That the Comptroller by rule if possible, or the Legislature by statute if necessary, hold in a separate account those unclaimed mineral proceeds derived from areas within the original Spanish and Mexican land grants.

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<sup>24</sup> For information on procedures for adopting recommendations and this final report, see Exhibit 3 – Rules and Procedures for Adopting a Report of the Unclaimed Mineral Proceeds Commission.

<sup>25</sup> For details on these recommendations, including vote tallies and explanations, as well as minority recommendations, see UMPC Report, 37-40.

<sup>26</sup> Government entities are currently required to comply with Property Code Chapter 74. Property Code Chapter 76 provides government entities with the option of maintaining their own unclaimed property program.

5. That the Legislature should suggest that the Speaker of the House of Representatives and the Lieutenant Governor set a committee interim charge to study and address past injustices against Tejano landowners.
6. That the Legislature appropriate additional resources to the Comptroller's office to provide enhanced bilingual outreach, including: strengthening the understanding of the current laws, proactively educating families on the processes for establishing heirship, pursuing a claim for unclaimed mineral proceeds, as well as providing general information to families with questions. Additional staff person(s) and resources should be directed to the Comptroller's South Texas field offices.
7. The Comptroller should enhance and/or increase audits of: 1) government and private sector entities that may be holding unclaimed mineral proceeds; and 2) unclaimed property that is reported to the Comptroller.

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## I. INTRODUCTION

HB 724, 83<sup>rd</sup> Regular Session, by Guillen, *relating to the creation of a commission to study unclaimed land grant mineral proceeds*, provides for a commission to study and make recommendations to the legislature regarding the distribution of unclaimed mineral proceeds that are derived from an original land grant, owned by a descendant of an original grantee, unclaimed and presumed abandoned under Texas Property Code Chapters 72, 73, 74, or 75 and delivered to the Comptroller under Property Code Chapter 74.

Pursuant to HB 724, Section 2(b), the Unclaimed Mineral Proceeds Commission (the Commission) is authorized to determine the amount of unclaimed original land grant mineral proceeds that have been delivered to the Comptroller. The Commission shall also determine efficient and effective procedures under which the state may be required to determine the owners of the proceeds, notify the owners of the proceeds, and distribute the proceeds to the owners.

Commission members were appointed in accordance with HB 724, Section 2(c), as follows:

<b>Governor Appointees:</b>	Lance Bruun, Presiding Officer Bennie Bock Trace Burton Donato Ramos, Jr. Jonathon Bazan Edmundo Canales
<b>Lieutenant Governor Designee:</b>	Constance Allison
<b>Speaker of the House Appointees:</b>	Jaime Rangel Al Cisneros
<b>General Land Office Designees:</b>	José Barragán LaNell Aston
<b>Comptroller Designees:</b>	Whitney Blanton Jim Sheer
<b>Historical Commission Executive Director:</b>	Mark Wolfe
<b>Texas State Historian:</b>	Bill O'Neal

The Commission met 8 times over the course of 12 months to hear testimony and consider information relevant to the Commission's charge. Most meetings took place in the Texas State Capitol Building, Room E1.030 or the Capitol Auditorium. One meeting took place at the Robert E. Johnson Conference Center, for which only audio recording is available. All meetings were scheduled to begin at 10:00 a.m. Links to the Capitol Events Archived videos appear to the right of each date:

<b>January 31, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=8000">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=8000</a>
<b>February 28, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=7201">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=7201</a>
<b>April 25, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=8299">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=8299</a>
<b>June 27, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=8463">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=8463</a>
<b>September 12, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9122">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9122</a>
<b>October 24, 2014</b>	Audio recording available upon request to the Texas Comptroller's Open Records Division: <a href="mailto:open.records@cpa.state.tx.us">open.records@cpa.state.tx.us</a> .
<b>November 21, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9358">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9358</a> <a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9362">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9362</a>
<b>December 19, 2014</b>	<a href="http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9524">http://tlchouse.granicus.com/MediaPlayer.php?view_id=13&amp;clip_id=9524</a>

Commission documents, including but not limited to agendas, minutes, written submissions, and drafts of this report and recommendations, are organized by hearing date and available to the public.

A written request for Commission materials may be made to the Comptroller's Open Records Division by mail, email, or fax to:

Open Records Division  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

Email: [open.records@cpa.state.tx.us](mailto:open.records@cpa.state.tx.us)

Fax: (512) 475-1610

## II. COMMISSION DELIBERATIONS

### A. Initial Meeting and Discussion of the Commission's Charge

The Commission first met on January 31, 2014. Following introductions, Presiding Officer Bruun reviewed the provisions of HB 724.

Section 1 of HB 724 defines “original land grant” as an initial conveyance of real property in this state, as evidenced by a certificate, title or patent from either:

1. The Crown of Spain (generally from 1720 through 1821);
2. The Republic of Mexico (from 1821 through 1848)<sup>27</sup>;
3. The Republic of Texas (from 1836 through 1845); or
4. The State of Texas (from 1845 to the present).

In other words, the term is broadly defined to include not only Spanish and Mexican land grants, but also land grants originating from the Republic and State of Texas. Notwithstanding this broad definition, the primary focus of the Commission's deliberations has been directed towards Spanish and Mexican land grants.

Section 2(a) of HB 724 contains the charge of the Commission as follows:

“The Unclaimed Mineral Proceeds Commission is created to study and provide recommendations to the legislature regarding the distribution of mineral proceeds that are:

1. Derived from an original land grant;
2. Owned by a descendant of an original grantee;
3. Unclaimed and presumed abandoned under Chapter 72, 73, 74, or 75, Property Code; and
4. Delivered to the comptroller under Chapter 74, Property Code.”

A key phrase of this quoted charge is the provision that the mineral proceeds are “**owned by a descendant of an original grantee.**” As will be discussed in this Report, understanding the distinction between mere status as a lineal descendant of an original grantee, on the one hand, and current ownership of minerals or unclaimed mineral proceeds, on the other, is the source of confusion, misunderstanding and disagreement that in all likelihood led to the creation of this Commission.

Following the literal review of HB 724, Commissioner Al Cisneros discussed past dispositions of the original Spanish and Mexican land grant grantees and their descendants, and implored the Commission to “find an historical solution to the injustices of the past.”

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<sup>27</sup> Galen Greaser, *New Guide to Spanish and Mexican Land Grants in South Texas* (Austin: Texas General Land Office, 2009), 121. The Mexican state of Tamaulipas continued to adjudicate lands in the Trans-Nueces until the end of the Mexican-American War in 1848. These grants were confirmed by the Texas Supreme Court in 1907.

These sentiments may be summarized as follows:

“Land was central to the way of life and identity of the Spanish and Mexican settlers of the lower Rio Grande. The war with Mexico and the resulting changes produced social and economic disruption and displacement of some established groups from their traditional landholdings. Anglo-American newcomers, with clear advantages in their knowledge of the new legal system, its procedures and language, now competed for the natural resources of the region, pressing their legal and economic advantages – supplemented at times by extralegal means – to acquire ownership of the land. In addition, loss of records, the difficulty of locating original boundary lines, the clouds on many of the titles, and complications of collective family ownership were potential sources of disputes and acrimony among competing parties of all stripes. The resulting resentment, sense of dispossession and injustice, suspicion, and bitterness flared into open conflict at times in South Texas in the nineteenth century and, justified or not, lingers even today.”<sup>28</sup>

The last sentence quoted above encapsulates most of the public testimony received by the Commission from Texas citizens of Hispanic descent.

The proceedings of the Commission received a significant amount of public interest. The Commission first met in the House Appropriations Committee Room, E1.030, because of its size. It was not large enough to accommodate the attending public, requiring the opening of one or more overflow rooms. The Commission’s meetings were later relocated to the Capitol Auditorium.

At its February 28 meeting, the Commission received invited testimony from State Representative Ryan Guillen, the House sponsor of HB 724. He outlined the legislative intent of the Commission: to shed light on relevant factual information leading to the creation of the Commission; to determine the amount of mineral proceeds in the possession of the State; to identify legal issues and resolutions; to evaluate the mineral proceeds reporting process; and to recommend legislative solutions.

With one eye on the charge of the Commission in HB 724, and with empathy for today’s citizens bearing the burden and resentment of “dispossession and injustice,” the Commission waded into its deliberations.

## **B. Attorney Eileen McKenzie Fowler and the Descendants**

The Commission begins this Report with a discussion concerning attorney Eileen McKenzie Fowler of LaPorte, Texas. Ms. Fowler purports to represent approximately 20,000 clients who identify themselves as lineal descendants of original Spanish or Mexican land grant grantees. She has filed numerous declaratory judgment lawsuits throughout South Texas obtaining judicial declarations of heirship for these “descendants.” She claims to charge only \$300 per client, and in some cases as much as \$375 per client. If true, she has collected millions of dollars in legal fees from the descendants. To date, she admits she has not recovered any mineral proceeds for

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<sup>28</sup> Greaser, *New Guide to Spanish and Mexican Land Grants in South Texas*, 4.



her clients. There was also testimony before the Commission that, in addition to the per-client fee, she collects significant sums of money from her clients for various expenses.

Ms. Fowler maintains a website, [www.eileenmckenziefowler.com](http://www.eileenmckenziefowler.com), on which she posts information concerning Spanish and Mexican land grants. The website includes a link entitled “HEIRS,” which includes a brochure containing information concerning the Heirs Enforcing Inheritance Rights (HEIRS) membership organization. The HEIRS brochure describing the organization’s purpose was furnished by Ms. Fowler for distribution to the Commission during her testimony at the February 28 meeting.

At that time, Ms. Fowler also explained her view of the history of land grants, including Spanish and Mexican laws and Texas-issued patents that protect original grantees and heirs’ ownership rights. She indicated that the Texas Constitution of 1866 relinquished mineral rights to the owners of the soil, including descendants of original grantees “forever.” Ms. Fowler further claimed that since the current system of reporting and remitting unclaimed mineral proceeds to the Comptroller’s office became effective in 1986, poor record-keeping and lack of enforcement has allowed oil companies to retain billions of dollars in unclaimed funds.

There followed considerable discussion between Mr. Bruun, and Ms. Fowler regarding the legal authority for claiming that descendants of original land grant grantees continued to own mineral interests. Mr. Bruun questioned Ms. Fowler concerning the HEIRS brochure which stated, in part, as follows:

“Normally under Texas property law when a person sells a piece of land and no mention is made of the transference of minerals contained, the right passes to the purchaser. ***In the case of land grants, if no mention is made of the minerals or the transference of minerals by sale or conveyance of the land, the minerals are retained by the seller and pass to his or her heirs.***” (Emphasis added.)

The term “land grants” here refers specifically to Spanish and Mexican land grants. Mr. Bruun questioned the legal basis of the emphasized sentence. Ms. Fowler pointed to the GLO’s *New Guide to Spanish and Mexican Land Grants* and claimed it highlights case law treating Spanish and Mexican land grants and descendants differently from other cases involving mineral ownership. She disagreed with Mr. Bruun’s assessment that the adverse possession statutes apply to those minerals, indicating that those rulings did not reference the descendants. Ms. Fowler also asserted that there were “vast areas” of South Texas that are uninhabited and “untitled.” She also testified that: “a lot of areas in South Texas have no known owners, and those belong to the descendants of the original grantees by patent.” She further claimed that there are hundreds of oil and gas wells that are “unclaimed” according to RRC records. Mr. Bruun and other members took issue with these remarks.

Following the meeting, Mr. Bruun addressed a number of questions to Ms. Fowler by letter, dated March 4, 2014. Two of these questions, and Ms. Fowler’s responses as set forth in her response dated March 31, 2014, are as follows:

1. Your handout entitled “HEIRS” under the section entitled “Unclaimed Surface and Mineral Estates” makes the following statement: “In the case of land grants, if no mention is made of the transference of minerals by sale or conveyance of the land, the minerals are retained by the seller and pass on to his or her heirs.” Please provide the legal authority for that statement.

**Ms. Fowler’s response:** “First, the HEIRS brochure was not authored by me, but by a member of the HEIRS Committee, Mr. George Farias. It is my understanding that Mr. Farias – a lay person – is to speak at the next Commission meeting, so you will be better served posing your question to him. However, since you brought this up at the February 28 meeting, I believe Mr. Farias has already begun the necessary changes to the HEIRS brochure, since it appears that the precise wording used was misleading. I suggest the need to focus on the real issues at hand.”

It should be noted that the HEIRS brochure, having been furnished to the Commission by Ms. Fowler, was not modified or edited during the course of the Commission’s proceedings, and has remained unchanged on Ms. Fowler’s website as of the last Commission hearing on December 19. It should also be noted that the return address for the HEIRS brochure is the same as Ms. Fowler’s law office. **Regardless of authorship, the Commission reasonably assumed that Ms. Fowler approved the contents of the brochure.**

Additional evidence that the contents of the HEIRS brochure reflect Ms. Fowler’s views is a written statement by Mr. Galen Greaser, author of the GLO’s *New Guide to Spanish and Mexican Land Grants in South Texas* referenced above, presented at the Commission’s April 25 meeting. Mr. Greaser states:

“Thanks for providing the video/audio link to the proceedings of the Unclaimed Mineral Proceeds Commission. After watching the entire proceedings for the February 28 meeting, I feel compelled to correct at least one statement made by Ms. Eileen McKenzie Fowler in her presentation. When pressed for the legal basis of her assertion that ‘In the case of land grants, if no mention is made of the transference of minerals by sale or conveyance of the land, the minerals are retained by the sellers and pass to his or her heirs or assigns’, she referred the Commission to cases purportedly cited in the New Guide to Spanish and Mexican Land Grants in South Texas that I compiled and wrote. For the record, the New Guide . . . says nothing about this point, either to sustain or negate it. In researching the materials used to prepare the New Guide . . . I simply did not find any reference to this specific issue.

I first heard Ms. Fowler make this assertion in a television interview broadcast by San Antonio’s KENS 5 sometime in 2006 or 2007. The notes I made of that interview include several other assertions that the Commission may want to test, as they appear to bear on the claims of mineral ownership advanced by the descendants of the original grantees of the Spanish and Mexican land grants in question. Ms. Fowler may have since modified some of the opinions she voiced in her KENS interview, but at the time she contended that under Spanish law grantees received the surface and mineral estate and that they received it in perpetuity, ‘to their heirs and assigns forever’. One of the purposes of the

Treaty of Guadalupe Hidalgo was to protect the interest of the heirs of these original grantees, Ms. Fowler said, and they agreed to do so under Spanish law. She went on to assert that none of the ordinary property acquisition statutes under Texas law apply to these grants. The statutes of adverse possession, tax sales for nonpayment, ‘those things don’t apply to granted land’. The mineral estate could only be acquired through the grantee’s heirs or assigns. Among her final assertions was the already noted opinion that under Spanish law one had to specifically convey the minerals, otherwise they were reserved to the heirs.”

As will be demonstrated, the Commission has reached different conclusions concerning the above matters as laid out by Ms. Fowler during the interview referenced by Mr. Greaser.

**The importance of focusing on the quoted statement from the HEIRS brochure and Ms. Fowler’s views is that, in the Commission’s opinion, these have served as a foundation for Ms. Fowler’s enterprise and the creation of hopes and expectations on the part of the “descendants” far beyond any reasonable level of attainment under current law.**

The second question to Ms. Fowler was as follows:

2. With respect to the Juan Jose Balli Grant, please provide the documentation that supports your contention that there are approximately 250 wells in Kenedy County which are “unknown and unclaimed.”

**Ms. Fowler’s response:** “Second, you can look online at [www.texasrailroadcommission.com](http://www.texasrailroadcommission.com) to see the mineral production on the Juan Jose Balli Grant, and I encourage you to do so. The abstract numbers are **B-45, Brooks County; H-290, Hidalgo County; K-1, Kenedy County; and W-1 in Willacy County**. According to the Railroad Commission, in Kenedy County alone, over 40 locations are designated as “unknown.” I would appreciate your letting me know if you find something different than I am finding.”

A search of the website [www.texasrailroadcommission.com](http://www.texasrailroadcommission.com) indicates that it is not an official website for the RRC, but rather is a website of a private company offering to sell the domain name “texasrailroadcommission.com.” This obviously was of no use to the Commission.

### **C. Burton, Ramos and Rangel Memorandum**

Following the February 28 Commission meeting, Mr. Bruun asked Commission members Trace Burton, Donato Ramos, Jr. and Jaime Rangel to research the issue of whether minerals underlying Spanish or Mexican land grants are treated differently from minerals underlying patents from either the Republic or State of Texas. Messrs. Burton, Ramos and Rangel are attorneys experienced in both oil and gas law and civil litigation. A reprint of their memorandum to the Commission presented at the April 25 meeting, with minor edits, is a part of this Report. The full memorandum is part of the record of the Commission:

## Brief history of Spanish, Mexican and Texas law on mineral ownership

As a province of Spain and part of the Mexican states of Coahuila y Texas and Tamaulipas, the State of Texas counted minerals as part of its patrimony until 1866. The Spanish Monarchy had established this claim under various legislative acts concerning minerals. Mineral exploitation in New Spain functioned under the legislation of the *Nuevo Cuaderno*, a legal treatise compiled under King Felipe II in 1584 that formed a new legal body for the operation of mines in the Americas. The *Nuevo Cuaderno* revoked any and all previous laws, ordinances, and grants contrary to the new ordinance, except those that claimed the mines for the king as his royal patrimony.<sup>29</sup> Felipe II's claim had a historical component: kings of Spain had laid claim to the minerals in their kingdom since as far back as 1348, through the *Ordenamiento de Alcalá*, which stated that:

“All minerals of gold, silver, lead and every other metal whatsoever in our realms belong to us; therefore no one shall presume to work them without our especial license[sic] and command; and in like manner salt fountains, reservoirs and springs, which are for the manufacture of salt, belong to us; wherefore we command that the rents derived therefrom be paid to us and that no one presume to intermeddle with them, except those to whom former kings, our predecessors, or we ourselves shall have granted the privilege or who shall have acquired them by immemorial possession.”<sup>30</sup>

The *Ordenamiento* was incorporated into Felipe II's *Recopilación*, a body of law that compiled all previous laws and ordinances into one.<sup>31</sup> The 1783 Mining Ordinances of New Spain maintained the right of the sovereign as the sole proprietor of the mines in the Spanish Empire. Citing the *Recopilación*, the Mining Ordinances state that: “The mines are the property of my Royal Crown, as well by their nature and origin, as by their reunion.”<sup>32</sup> Vassals who had been granted or received grants to the minerals did so with the right to sale and convey them, but “without separating them from my Royal patrimony.”<sup>33</sup> Thus, the king's vassals could be put in possession of the minerals through a royal grant but the minerals remained under the king's domain. Although the provisions were primarily intended for mines of gold and silver, the Ordinances broadened the definition of mines to include “those of precious stones, copper, lead, tin, quicksilver, antimony, zinc, bismuth, rock salt, or other fossils, whether perfect or mixed metals, bitumen, or other production of the earth.”<sup>34</sup>

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<sup>29</sup> *Novísima Recopilación*, Law 4, Title 18, Book 9.

<sup>30</sup> *Ibid.*, Law 1, Title 18, Book 9. Translation in John A. Rockwell, *A Compilation of Spanish and Mexican Law in Relation to Mines and Titles to Real Estate in Force in California, Texas and New Mexico* (New York: John S. Voorhies, Law Bookseller and Publisher, 1851), 112. The original citation can be found in Laws 47 and 48, Title 32 of the *Ordenamiento de Alcalá*. The *Ordenamiento*, issued under Alfonso XI in 1348 and published in 1386, was incorporated into the *Recopilación* as Laws 2-4, Title 13, Book 6, and subsequently into the *Novísima Recopilación* as cited above.

<sup>31</sup> The *Recopilación* was first published in two volumes containing nine books. The work was republished six times prior to the publication of a new compilation of laws under Carlos VI titled *Novísima Recopilación*.

<sup>32</sup> Section 1, Chapter 5 of the *Mining Ordinances*. Quoted from Rockwell, 49.

<sup>33</sup> Section 2 of above-cited Chapter. Quoted from Rockwell, 49.

<sup>34</sup> Section 22, Chapter 6 of the *Mining Ordinances*. Quoted from Rockwell, 54.

After its independence, Mexico continued to enforce the Spanish legal system it had inherited until new laws could be created to supersede those of the old legal codes.<sup>35</sup> The *Reglamento Provisional Político del Imperio Mexicano*, which abolished the Spanish Constitution of 1812 and established the Mexican Empire, allowed for the continuance of the laws, ordinances, and decrees previously promulgated in the territory of the Empire so long as they did not conflict with the present legislation and with future laws, ordinances and decrees.<sup>36</sup> Any new laws dictated by the national government were incorporated into the existing body of laws adopted from the colonial period.

In the fifteen years between Mexico's independence from Spain and the proclamation of the Republic of Texas, few (if any) changes were made to the adopted Spanish laws regarding minerals.<sup>37</sup> Those minerals that had not been expressly granted by the sovereign, through old Spanish land grants or those issued by the Mexican states of Coahuila y Texas and Tamaulipas, remained part of the patrimony of the newly established Republic of Texas. The admission of Texas into the Union in 1845 did not modify the existing laws with respect to minerals. **Until 1866, it was understood that in Texas, minerals were reserved for the state.**

**In a conveyance of land grant property, if the conveyance was silent as to minerals, were the minerals reserved by the grantor?**

In the HEIRS brochure, there appears the following statement concerning the reservation of mineral rights under land grant acreage:

“Normally under Texas property law when a person sells a piece of land and no mention is made of the minerals contained, the rights pass on to the purchaser. **In the case of land grants, if no mention is made of the transference of minerals by sale or conveyance of the land, the minerals are retained by the seller and pass on to his or her heirs.**” (Emphasis added.)

The first sentence from the above-quoted text is a correct statement of the law in Texas. Under Texas law, a reservation of the mineral estate must be clear in order to prevent it from passing to a grantee in a conveyance. Texas law is clear that a reservation of minerals must be made by clear language and courts do not favor reservations by implication.<sup>38</sup> Similarly, a reversionary estate passes with the grant of the surface rights unless the reversion is specifically reserved to the grantor.<sup>39</sup> In *Melton v. Davis*, a 92.5 acre parcel of land was conveyed save and except a 4.178 surface acre estate which was reserved for the State of Texas for a right-of-way.<sup>40</sup> The effect of the exception was that the grantees were conveyed a surface estate of 88.3 acres. A dispute arose between the grantors and grantees as to the ownership of the minerals under the State's 4.178 surface estate. The trial court held in favor of the grantors after finding that the deed did not pass

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<sup>35</sup> María del Refugio González, *Historia del derecho mexicano* (México, D.F.: UNAM, Instituto de Investigaciones Jurídicas, 1983), 46-47.

<sup>36</sup> Reglamento provisional político del Imperio Mexicano, Article 2, Sole Chapter, Section 1.

<sup>37</sup> Hans W. Baade, “Roman Law in the Water, Mineral and Public Land Law of the Southwestern United States,” *The American Journal of Comparative Law*, Vol. 40, No. 4 (Autumn, 1992), 865.

<sup>38</sup> *Sharp v. Fowler*, 151 Tex. 490, 252 S.W.2d 153, 154 (Tex.1952).

<sup>39</sup> *Ladd v. Du Bose*, 344 S.W.2d 476 (Tex. Civ. App.—Amarillo 1961, no writ).

<sup>40</sup> *Melton V. Davis*, 443 S.W.2d 605 (Tex. Civ. App.—Tyler 1969, writ ref'd n.r.e.).

the mineral estate under the 4.178 acre tract to the grantees. The court of civil appeals, however, held that the mineral estate passed to the grantees because the only exception made by the grantors from the “land conveyed” was as to the State’s surface interest, and no reservation as to the minerals was made by the grantors. The court held that if the grantors had intended to reserve the disputed minerals, they could have done so by specific and unequivocal language expressing such intent.<sup>41</sup>

**As of the date of this Report, no support can be found for the second (emphasized) sentence of the above-quoted text from the HEIRS brochure.**

### **What is meant by the 1866 Amendment having a “retrospective” effect?**

A review of the legal points cited by Mr. Farias, the HEIRS brochure, and those of various witnesses who have testified thus far in front of the Commission, reveals a reliance upon Article VII, Section 39 of the Texas Constitution of 1866 (the “1866 Amendment”). The 1866 Amendment provides as follows:

“That the State of Texas hereby releases to the owner of the soil all mines and mineral substance that may be on the same, subject to such uniform rate of taxation as the Legislature may impose. All islands along the Gulf coast of the State, not now patented, or appropriated by locations under valid land certificates, are reserved from location or appropriated (appropriation) in any other manner by private individuals than as the Legislature may direct.”

Under the 1866 Amendment, the State of Texas released its claims to minerals, and such release was made for the benefit of the “owner of the soil.”

The Supreme Court of Texas held in *Cox v. Robison* that the 1866 Amendment was “retrospective” in nature.

Mr. Farias surmises that because the 1866 Amendment was retrospective in nature, the “[o]wners of land granted the successive sovereigns (Spain, Mexico, Republic of Texas and the state of Texas) before adoption of this amendment, would be given complete ownership of the minerals on their land.” Mr. Farias cites the General Land Office’s *New Guide to Spanish and Mexican Land Grants in South Texas* as authority for this proposition that the 1866 Amendment was retrospective in nature, thereby giving prior owners of the soil (under previous sovereigns) a claim to the minerals relinquished by the State of Texas under the 1866 Amendment.

In order to determine what is meant by “retrospective,” one must review the case of *Cox v. Robison*,<sup>42</sup> decided by the Supreme Court of Texas in 1912. In *Cox*, the Court decided whether The General Land Office could reserve the minerals under an 80-acre tract of land patented to Mr. Cox on May 25, 1907. Mr. Cox argued that the 1866 Amendment was prospective in nature, and as such, after the 1866 Amendment, the State of Texas could not enact laws allowing the

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<sup>41</sup> *Melton*, 443 S.W.2d at 608.

<sup>42</sup> 150 S.W. 1149 (Tex. 1912).

General Land Office to reserve minerals from any conveyance of public lands. Mr. Cox argued that any such laws were unconstitutional under the 1866 Amendment.

The State of Texas countered with the argument that the effect of the 1866 Amendment was retrospective in nature, and would thus not prohibit the State of Texas from enacting laws which allowed the State to reserve minerals from any conveyance of public lands.

The Supreme Court of Texas framed both arguments as follows:

“If this provision was intended by the framers of the Constitution and the people who adopted it, as a grant by the State to both the then and all future owners of the soil of all mines and minerals that might be in it, the State must be held to have been without authority to in anywise further control their disposition; and if so construed this section of the Constitution amounts to a limitation upon the power of the Legislature to enact laws of the character of the statute under review. If, however, it was curative in its nature and retrospective in its effect, and intended as an extinguishment of the rights of the State in only those mines and minerals in soil owned at the time of its adoption, the title of the State to all other mines and minerals in lands of the public domain remained unimpaired and unaffected, and its authority to provide by law that their reservation should be made in future conveyances of such lands, must be recognized.”

The Court reviewed the legislative history behind the 1866 Amendment, including the reaction to the “El Sal del Rey” controversy and the Supreme Court of Texas’ decision in *Cowan v. Hardeman*<sup>43</sup> (vesting in the State of Texas the title to all minerals to which its rights had not been expressly released).

In rejecting Mr. Cox’s arguments, and finding that the 1866 Amendment was retrospective in nature, the Court stated:

“A full consideration of the question in all of its phases has brought us to the conclusion that it was not the intention of the framers of the original provision in 1866, or of the people who adopted the present Constitution in 1876, to give these terms a prospective operation and effect so as to deny to the Legislature the power to provide for the reservation of minerals in future grants of the school and other public lands if in their wisdom and the exercise of their province such reservation was in accord with a sound public policy and best interests of the State. We recognize the rule that in general constitutions and statutes operate prospectively; but the exception is as well established as the rule, that they may operate retrospectively when it is apparent that such was the intention, provided no impairment of vested rights results. It seems to us to be apparent that the authors of the original provision did not intend that it should have a prospective operation. Entirely aside from the question of the true meaning of the terms themselves, it is illogical to say that those who came after them and but readopted the provision as to came from their hands, had a different intention, for to so hold is to deny to the act of readoption the purpose and effect that it inherently possessed. It is not the habit of the people or of law-making bodies to change the organic or statute law by the re-enactment of the same constitution or statute. It is a sounder view to assume, as has been said before, that the object of a deliberate readoption of the original provision in the subsequent constitutions was to extend the

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<sup>43</sup> 26 Tex. 217 (Tex. 1862).

law to those periods, with the intent that it should have, then, the same operation and effect that it had at the time of its original adoption.”<sup>44</sup>

The Supreme Court of Texas’ decision in *Cox*, that the effect of the 1866 Amendment was retrospective, simply stands for the proposition that the State of Texas may enact legislation giving the State of Texas (or its agencies) the power to reserve minerals from any conveyance of public lands, provided that no impairment of vested rights results from such reservation.

**There is no authority for the proposition that the 1866 Amendment, being retrospective in nature, somehow released minerals to all previous owners of the soil, or to anyone other than the owner of the soil as of the date of the 1866 Amendment.** To the contrary, the 1866 Amendment was “intended as an extinguishment of the rights of the State in only those mines and minerals in soil owned at the time of its adoption...” (Emphasis added.)

Also, at least one court has examined the 1866 Amendment in the context of property claims asserted by land grant descendants.<sup>45</sup> *Jones* arose out of the historic development of the Spindletop Oil Field in East Texas. The plaintiffs claimed rights to the mineral interests in the field by virtue of Spanish land grants. The defendants argued that the doctrine of merger applied and that the 1866 Amendment evidenced the intent to release to the owners of the soil all of the title of the Sovereign to the mines and minerals for the purpose of combining the Sovereign’s rights in the mineral estate with the surface estate so as to give the soil owners the general title to the entire property, not to two severed estates. The court noted the thorough analysis of the 1866 Amendment by the Texas Supreme Court in *Cox*, particularly with respect to what “retrospective” and “prospective” meant. In ruling for the defendants, the *Jones* court held:

“[A]s a result of the Constitutional Release of 1866 of the minerals to the owners of the soil, the minerals and the soil became merged into a general title, and if necessary, **is subject to limitation title by possession of the minerals in this case. There has actually been possession of the minerals since the year 1901, and the holders of the minerals have acquired title by limitation.**”<sup>46</sup> (Emphasis added.)

### **Sample declaratory judgment and effect on issue of ownership**

The letters from Mr. Farias and Ms. Fowler generally reference land grant descendants and do provide an example of a declaratory judgment supporting an heirship claim. However, their correspondence is silent as to any legal authorities or specific facts which support the land grant descendants’ theory of ownership to the unclaimed mineral proceeds held by the Texas Comptroller.

### **The Commission and the issue of ownership**

In discussing Section 3(2) of HB 724, which relates to recommended procedures to determine ownership of proceeds, Mr. Farias states in his white paper furnished to the Commission: “What

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<sup>44</sup> *Cox*, 150 S.W. at 1156.

<sup>45</sup> *Jones v. McFaddin*, 382 S.W.2d 277 (Tex. App. – Texarkana 1964, writ dismissed w.o.j.).

<sup>46</sup> *Jones*, 382 S.W.2d at 280.



the commission can do is validate that the descendants of the original grantee have a vested right and are ‘de facto’ owners.” **The Commission has no authority to “validate” or determine who owns the unclaimed mineral proceeds in any respect, as that would necessarily involve an adjudication of title.** Section 3(2) only tasks the Commission with recommending procedures. An ultimate determination of ownership (i.e., title), however, is key to disbursing the proceeds appropriately and is a determination that probably needs to be made by a Texas court.

#### **D. Additional Information Furnished by Ms. Fowler**

Ms. Fowler appeared at the Commission’s June 27 meeting, both to provide testimony and a written response to the Burton, Ramos and Rangel memorandum.

Ms. Fowler first presented voter registration lists for Starr County in 1866 and Texas County tax rolls for 1867. These records indicate Spanish surname voters and taxpayers at that time.

**However, the Commission finds that this is not evidence of current ownership of either minerals or unclaimed mineral proceeds.**

Next, Ms. Fowler presented copies of approximately thirty mineral deeds and/or oil and gas leases from the years 1934 to 1935 executed by persons with Spanish surnames. **Again, the Commission finds that this is not evidence of current mineral ownership or unclaimed mineral proceeds.**

#### **E. Railroad Commission and Drillinginfo Records**

Most interestingly, Ms. Fowler presented copies of a schedule from the website of a company called Drillinginfo, [www.drillinginfo.com](http://www.drillinginfo.com). A table presented included “Well Type” and “Well Status” codes, such as “AP” for “Active Permit,” “B” for “Oil and Gas,” “DH” for “Dry Hole,” etc. The well type codes also included “U” for “Unknown.” There were numerous wells in the schedules that followed with the well status “U” or “Unknown.” Ms. Fowler asserted, without any proof or evidence, that the well type “U” or “Unknown” referred to ownership. **The Commission finds no basis in fact for this claim.**

In addition to well type, the schedule also included headings for company, current lease name, well number, county, depth, and status. Ms. Fowler pointed to a series of records that did not include information under the heading “Current Lease Name.” She stated that the missing information in this column indicated that the lessor is unknown, in other words, the oil companies did not know who owned the mineral interests for these wells. **However, there is no evidence to substantiate the determination that the lease name listed directly correlates to the name or names of mineral interest owners or lack thereof.**

The Commission understands that Drillinginfo derives the data, which it makes available to its subscribers, from RRC records. Ms. Fowler has continuously asserted throughout the Commission’s proceedings that both RRC and Drillinginfo records reflect numerous oil and gas wells with unknown ownership. Representatives of Drillinginfo were invited to testify but declined to do so.

## **F. Testimony from the Railroad Commission**

At its April 25 meeting, the Commission heard invited testimony from Mr. Colin Lineberry, the Chief Hearings Examiner for the RRC. He testified concerning the agency's jurisdictional authority over the oil and gas industry. He explained that operators are required to report production and that records are kept based on operators and wells. Mr. Lineberry testified that oil companies do not identify who owns the underlying minerals in any filings with the RRC, unless a lease happens to be named after a particular mineral owner. Lease name information, which may be derived from land owners or land grant names, is voluntarily submitted and is not necessarily associated with the names of mineral interest owners. Mr. Bruun asked Mr. Lineberry of his knowledge of "unknown wells" in conjunction with testimony from Ms. Fowler, in which she indicated that in the land grant known as "La Barreta" in Kenedy County there were approximately 250 wells that were "unknown and unclaimed." Mr. Lineberry responded that the RRC does not keep that type of information or any information that would lead to that conclusion.

## **G. José Francisco Balli Grant**

The José Francisco Balli Grant in Kenedy County is known as "La Barreta." The vast majority, if not all of La Barreta, is owned and occupied by the King Ranch, the Kenedy Memorial Foundation, the Kenedy Trust, the Ball Ranch and the Armstrong Ranch. There are no "unknown" wells on these properties, and the owners would take great exception to any claim of ownership by the descendants. In a case with the Balli heirs, title to La Barreta was once again confirmed to the current owners in *Aguillera v. The John G. and Marie Stella Kenedy Mem. Foundation*.<sup>47</sup>

## **H. The Railroad Commission's Charge is to Prevent Waste and Protect Correlative Rights.**

Historically, the constitutional and statutory grants of power to the RRC have rested on two bases: (i) the prevention of waste; and (ii) the protection of correlative rights.<sup>48</sup> The RRC must look to each field as a whole to determine what is necessary to prevent waste while at the same time countering this consideration with a view toward allowing each operator to recover his fair share of the oil in place beneath his land. The prevention of waste focuses on the conservation of natural resources in the public interest – on maximizing the size of the oil and gas "pie" available. The protection of correlative rights aims at regulating the private property rights of persons owning interests in a common source of supply of oil or gas – on distributing the "pie" among its owners.<sup>49</sup> In carrying out these duties, there has devolved upon the RRC the power to promulgate rules, orders and regulations that control the industry, and such are issued pursuant to the police power of the state, and that power may invade the right of the owner of the land to the oil in

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<sup>47</sup> 162 S.W. 3d 689 (Tex. App. 2005, Corpus Christi, pet. denied).

<sup>48</sup> *Texaco, Inc. v. Railroad Commission*, 583 S.W.2d 307, 310 (Tex. 1979)

<sup>49</sup> 2 Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 8.3[A] (LexisNexis Matthew Bender, 2<sup>nd</sup> ed. 2013).

place under his land as long as it is based on some justifying occasion, and is not exercised in an unreasonable or arbitrary manner.<sup>50</sup>

### **I. The Railroad Commission Does Not Adjudicate Title Disputes or Boundary Disputes.**

The RRC lacks authority to adjudicate property disputes, to determine ownership of oil and gas, and to decide inherently judicial matters, *e.g.*, trespass or other torts.<sup>51</sup>

### **J. Customary Oil Field Practices**

Ms. Fowler's assertion that there are significant numbers of oil and gas wells in Texas with "unknown owners" is not consistent with the Commission's knowledge or understanding concerning customary oil field practices. Prior to making the significant investment of drilling a well, a prudent oil and gas operator will examine title to the land upon which the well is to be drilled. Ideally, this includes an examination of an abstract of title consisting of all records affecting title to the land on file in the official records of the county from the Sovereignty of the Soil (the Crown of Spain, the Republic of Mexico, the Republic of Texas or the State of Texas) to the present. At a minimum, the operator will conduct a title examination sufficient to identify the current mineral and/or royalty owners. The operator will then secure oil and gas leases from the owners. There may be exceptions where the operator is either careless or errors are made in the examination. However, these instances are rare and can only account for a small amount of mineral proceeds held by the Comptroller, if any.

**The Commission finds that the official records of the RRC and the private company Drillinginfo do not contain any evidence or data of ownership of minerals or unclaimed mineral proceeds. Further, the Commission has not been presented with any credible evidence of the existence of lands or wells with "unknown ownership."**

### **K. The General Land Office's Charge is to Manage State-Owned Land and Minerals**

A presentation was made by the GLO in which its role and responsibilities were stated. In summary, the GLO core mission is the management of state lands and mineral-right properties in Texas totaling 13 million acres, which are dedicated to the Permanent School Fund (PSF).

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<sup>50</sup> *Brown v. Humble Oil and Refining Co.*, 126 Tex. 269, 83 S.W.2d 935 (1935); see also, *Railroad Commission of Texas v. Manziel*, 361 S.W.2d 560, 572 (Tex. 1962).

<sup>51</sup> *Gregg v. Delhi-Taylor Oil Corp.*, 337 S.W.2d 216 (Tex. Civ. App.—Austin 1960), *aff'd*, 344 S.W.2d 411 (Tex. 1961). The courts, not the Railroad Commission, have the authority to determine whether a sub-surface trespass is occurring or about to occur, and the substantial evidence rule does not apply. See also, *Magnolia Petroleum Co. v. Railroad Commission*, 163 S.W.2d 446 *rev'd*, 170 S.W.2d 189, 191 (Tex. 1943), where an applicant for a drilling permit makes a reasonably satisfactory showing of a good faith claim of ownership to a tract, the fact that a bona fide title dispute over such tract is in the courts does not defeat his right to a permit, and the Railroad Commission is not required to abate any such action pending the settlement of the suit in the courts. See also, *Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437 (Tex. 1946). "The duties of the Railroad Commission as given by law do not encompass the power or authority of deciding the ownership of the title to land." See also, *Sun Oil Co. v. Railroad Commission of Texas*, 390 S.W.2d 803, 806 (Tex. Civ. App.—Austin 1965, writ ref'd n.r.e.), citing *Magnolia Petroleum Co.* for the proposition that the Railroad Commission has no jurisdiction over boundary disputes.

Included in that portfolio are the beaches, bays, estuaries and other “submerged lands” out to 10.3 miles in the Gulf of Mexico, institutional acreage, grazing lands in West Texas, and timberlands in East Texas. In managing that property, the GLO issues oil and gas leases, surface leases and sells state land only where the surface and/or minerals are owned by the state. Sale and lease proceeds from PSF lands go into the PSF, an endowment for Texas public education.

As the oldest and most diverse state agency in Texas, GLO’s responsibilities cover many other areas. The agency's Archives and Records (A & R) division houses original Spanish, Mexican, Republic and State of Texas land grants. Records of the original land grants and related documents date back to the mid-1700s and are available for research both online and in person. The GLO is a repository for the land records relating only to original land grants in Texas. Later land transactions or records of current land and mineral ownership are not a part of these records. The Land Office staff can not alter, make corrections or insert additional information in the archival records of this office.

#### **L. Judge David Peeples’ Draft Order**

At the Commission’s April 25 hearing, a draft Order prepared by the Honorable David Peeples, Chief Administrative Judge of the Fourth Administrative Judicial Region of Texas, was presented and discussed. The draft Order dealt with Ms. Fowler’s declaratory judgment actions. At the Commission’s June 27 hearing, Ms. Fowler questioned the discussion of an “unsigned” Order. The draft Order was furnished by Judge Peeples to the Comptroller’s office with the following message:

“You have my permission to show this message to the [Commission], and to tell all the [Commission] that the attached Order is indeed mine, and that expresses my summary of the lawsuits at that time, together with my explanation why people paying a lawyer to get judgments declaring their biological lineage were very unlikely to recover any monies held by the Comptroller, unless they could also show that they were legal heirs or claimants.”

Judge Peeples’ Order includes the following summary conclusions which are now also adopted as conclusions of the Commission:

#### **“Two separate realities must be understood.**

**First, the declaratory judgments show biological lineage or descendency, not legal inheritance or ownership. The declaratory judgments do not show that ownership of land or minerals by previous generations passed to the biological heirs. The judgments do not address the possibility that ownership passed (through will, sale, gift, mineral severance) to someone outside the family in previous years.**

**Second, even if legal inheritance is proved, the amounts of the claims may be very small when compared to the cost of asserting the claims and the time spent compiling the proof needed.” (Emphasis added.)**

At the Commission's June 27 hearing, Ms. Fowler also submitted testimony concerning numerous anecdotes, none of which were useful to the Commission. Asked what her proposal to the Legislature would be, she replied that \$2 billion should be set aside in an interest bearing fund against which the "descendants" could make claims. She later increased that request to \$10 billion.

### **M. Texas Real Property Laws Apply to Spanish and Mexican Land Grants**

Finally, concerning Ms. Fowler's claims that Texas real property laws, including the statute of limitations, do not apply to Spanish or Mexican land grants, the Commission once again refers to Mr. Greaser's able work:

"Many courts have interpreted the provisions of the Treaty of Guadalupe Hidalgo and divergent opinions on a number of issues can be found. Unanimous agreement is expressed, however, on the principle that a succeeding government is bound by the valid grants of its predecessor and that the determination as to the validity and extent of the grants depends on the law of the preceding sovereign in effect at the time of the grant.<sup>52</sup> The courts have been asked to decide two main issues. First, what constitutes a valid Spanish or Mexican grant, particularly in cases where the granting process had been initiated but not completed? Later in this study we will review what the courts have said on this issue. Second, and more difficult, what was the nature of the protection afforded to property in the ceded territory? At the time of the cession Mexico had in place its own set of property laws guaranteeing and regulating the many aspects of land ownership (use, purchasing and selling, leasing, bequeathing, trespass, eminent domain, etc.). The treaty spoke about inviolably respecting property of every kind. Did this place the new sovereign under the obligation of perpetuating for the titles it recognized all the property laws of the former sovereign? If Spanish and Mexican governments did not collect taxes on land, for example, was land covered by a recognized title perpetually free from taxation when it became part of Texas or of the United States? The courts appear to make a differentiation between what are strictly property rights (i.e. the rights to benefit from the property, to transfer or sell it, to exclude others from it), on the one hand, and the rules of law affecting property (taxation, **adverse possession**, zoning, etc.), on the other. An individual's property rights, which are considered a part of the realty, remain unchanged, but the rules of law can be altered or repealed by the new government. Put another way, the courts have decided that the treaty does not exclude the property of Mexican citizens from being subject to the valid, nondiscriminatory property laws of the state of Texas.<sup>53</sup>

This decision is clearly expressed in the case of *Amaya et al v. Stanolind Oil and Gas Company*. This was an action by Amaya and others, citizens of Mexico, to recover title to oil lands in Texas. The plaintiffs claimed title under a grant from Spain and relied on Article VIII of the Treaty of Guadalupe Hidalgo, which provided that title of Mexican citizens to such land would be 'inviolably respected'. They contended that this article

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<sup>52</sup> See, for example, *Harris v. O'Connor*, 185 S.W.2d 993, among the many cases that could be cited.

<sup>53</sup> For a discussion of these issues see Harold Hoffman, "Texas Land Titles and Vested Rights," *Texas Law Review*, XXV(1946-47): 508-529.

secured the lands involved against any **statutes of limitation**, forfeiture or prescription passed by Congress or the Legislature of Texas whereby Mexican citizens might lose title. **The court held that the treaty provision guaranteed the same protection of law to Mexicans as to citizens of the United States but did not prevent the enactment of laws relating to title to lands. In the language of the court, the treaty did not ‘guarantee that those Mexicans should never lose their title to persons by foreclosure, sales under execution, trespasses, adverse possession, and other nongovernmental acts’.** A lower court in the same case stated, ‘The expression “inviolably respected” can mean nothing more than that such property shall be respected the same as if belonging to citizens of the United States. . . . The word “equally” means that property in Texas shall be subject to the same laws, and does not mean that one law shall be applicable if the rights of Texans are involved, and an entirely different law should be applicable if the rights of Mexicans are involved.’<sup>54</sup>

The loss of property by Mexican landowners due to adverse possession, tax sales, and foreclosure has prompted some commentators to conclude that the treaty did not effectively protect the property of these original landowners and their heirs when they suddenly found themselves part of a new country with unfamiliar laws and an unfamiliar language.<sup>55</sup> A comprehensive study of the complex process by which original landowning families in the trans-Nueces were displaced would necessarily have to include the issue of legal protection of acquired rights, but it would also consider economic factors such as changes in the ranching economy, market cycles and competition, access to capital and credit, and the viability of partitioned landholdings, as well as social factors related to intermarriage, partible inheritance, and demographic changes.<sup>56</sup> **Examples of fraud, forced evictions, and illegal seizures of land can, unfortunately, be found, but generalizations about stolen land and mass dispossession do not fully explain or do justice to the complex experience of landholding and ranching of the original pobladores and their descendants in the trans-Nueces.’**<sup>57</sup> (Emphasis added.)

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<sup>54</sup> Citations taken from Hoffman, *Ibid.*, footnote 16. *Amaya v. Stanolind Oil & Gas Co.*, 158 F(2<sup>nd</sup>) 554 (Fifth Circuit Court of Appeals, 1946).

<sup>55</sup> See Griswold del Castillo, *The Treaty...*, 107

<sup>56</sup> The best study to date of this complicated process involving social, economic, and political dynamics is Armando C. Alonso, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* (Albuquerque: University of New Mexico Press, 1998).

<sup>57</sup> Greaser, *New Guide to Spanish and Mexican Land Grants in South Texas*, 131-132.

## **N. Summary, Conclusions and Findings**

In summary, with respect to Ms. Fowler and her work, the Commission makes the following findings:

- **The following statement in the HEIRS brochure, furnished and repeated by Ms. Fowler, has no basis in law or fact:**

**“In the case of land grants, if no mention is made of the transference of minerals by sale or conveyance of the land, the minerals are retained by seller and pass to his or her heirs.”**

- **Ms. Fowler has not provided the Commission with any legal authorities or evidence to rebut the conclusions reached in the Burton, Ramos and Rangel memorandum and restated in this Report.**
- **Texas real property laws, including laws of conveyance, sale, gift, inheritance, taxation and adverse possession, apply to Spanish and Mexican land grants.**
- **Status as a lineal descendant of an original Spanish or Mexican land grant grantee, whether by formal judicial declaration or otherwise, does not standing alone bestow the descendant with the status of a present owner of minerals or unclaimed mineral proceeds.**
- **Even if a descendant can establish a right to unclaimed mineral proceeds paid to the Comptroller, the amount of the claims may be very small when compared to the cost of asserting the claims and the time spent compiling the necessary proof of ownership.**
- **No credible evidence was presented to the Commission of the existence of lands or wells with “unknown” ownership.**

### III. NEW MEXICO AND TEXAS CONFIRMATION PROCESS

One of the descendants, Mr. Farias, mentioned previously as the author of the HEIRS brochure, both testified and submitted numerous written documents entitled “White Papers.” One such written submission included a suggestion that the Commission recommend legislation similar to that adopted by New Mexico. The issue was researched by Mr. Jonathan Steinberg, Assistant General Counsel in the Comptroller’s office.

Under the 1848 Treaty of Guadalupe Hidalgo, which ended the Mexican-American War, the United States obtained vast territories from New Mexico to California. Much of this land was subject to pre-existing land grants to individuals, groups, and communities made by Spain and Mexico from the 17th to the mid-19th centuries. The Treaty provided for U.S. recognition and protection of the property rights created by these grants.<sup>58</sup>

Congress did not act in New Mexico until 1854, which was not a state and which remained relatively isolated. Legislation required the appointment of a surveyor general who would examine claims and make recommendations to Congress, which would make final determination. This system proved unwieldy in the face of heavy lobbying by land speculators, but no action to remedy the situation was taken until 1891.<sup>59</sup>

In New Mexico today, land grant heirs and legal scholars contend that the United States failed to fulfill its obligations regarding community land grants under the Guadalupe Hidalgo treaty. This contention is based in part on a belief that the percentage of community land-grant acreage recognized by the U.S. government in New Mexico was significantly lower than the percentage recognized in California, and a view that confirmation procedures followed in New Mexico were unfair and inequitable compared with the different procedures established for California. The effect of this alleged failure to implement the treaty properly, heirs contend, is that the United States either inappropriately acquired millions of acres of land for the public domain or else confirmed acreage to the wrong parties. According to some heirs, the resulting loss of land to grantees threatens the economic stability of small Mexican-American farms and the farmers’ rural lifestyle.<sup>60</sup>

In 2003, the New Mexico Legislature passed HB 74 which created the Land Grant Committee (LGC) for one year. It was subsequently renewed until 2009. The legislation required the LGC to study existing law regarding land grants; gather testimony from land grant heirs, state agencies and other community groups from across New Mexico to understand the relationships among the different groups and the issues and concerns faced by the different groups; work in conjunction with the Guadalupe Hidalgo task force; and develop legislation to improve existing law.<sup>61</sup>

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<sup>58</sup> U.S. General Accounting Office, *TREATY OF GUADALUPE HIDALGO: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico*, GAO-04-59, 2004, <http://www.gao.gov/products/GAO-04-59>.

<sup>59</sup> Galen Greaser and Jesus F. de la Teja, “Quieting Title to Spanish and Mexican Land Grants: The Bourland and Miller Commission 1850-1852,” *Southwestern Historical Quarterly* 95 (1992): 445-464, 448.

<sup>60</sup> U.S. General Accounting Office, *TREATY OF GUADALUPE HIDALGO*.

<sup>61</sup> New Mexico Legislature, Land Grant Committee, *2008 Interim Final Report to the Forty-Ninth Legislature Second Session*, Santa Fe, New Mexico Legislative Council Service, 2008.



The 2008 LGC report to the Legislature recommended that the 2009 legislative session should consider, among other issues, legislation creating a single state agency to deal with community land grant issues on an ongoing basis and act as a liaison between community land grants and local, state and federal government agencies; review operation of the treaty of Guadalupe Hidalgo division of the office of the attorney general and request funding of the division as part of the base budget of the office of the attorney general; and hear the attorney general's response to the 2004 U.S. government accountability office report on community land grants.<sup>62</sup>

In 2009, the New Mexico Legislature enacted the Land Grant Support Act by which a permanent Land Grant Council was created. The stated purpose of the Land Grant Council is to provide advice and assistance to “land grants” (defined as a patented community land grant-merged organized and operating as a political subdivision of the state) and to serve as a liaison between land grants and the federal, state and local governments.

In contrast to the land grant adjudication process (or lack thereof) in New Mexico, in California, where statehood and the Gold Rush required more urgent action, the adjudication process began with investigations by federal government agents of available California and Mexican archival records. In March 1851, Congress created a board of land commissioners to examine and decide the validity of claims. The California board, active between 1851 and 1856, handled over eight hundred claims, confirming the great majority.<sup>63</sup>

Unlike New Mexico and other western states, Texas retained title to its unappropriated vacant lands when it became a state. Thus the task of confirming or adjudicating previously issued titles fell upon the state rather than the federal government. This process is detailed in Mr. Greaser's work quoted earlier in this Report.<sup>64</sup> The confirmation process began with an Act of 1850, under which the so-called “Bourland and Miller Commission” was created, and continued through an Act of 1901.

In Texas, the adjudication process in the Trans-Nueces was quick, and it favored Mexican land tenure. Thus by 1852 the legislature confirmed 209 claims with only a handful of outright rejections. The state courts then proceeded to validate sixty-seven additional claims, all but seven of them before the Act of 1901. The courts rejected only two claims in the 1920s. Equity, however, favored Mexican landholders for the most part. In the end only twenty-four land grants were never adjudicated for sundry reasons.<sup>65</sup>

As noted by Mr. Greaser, “the assimilation of the trans-Nueces grants into the state's land system helped Texas avoid many of the difficulties the United States government created for itself in New Mexico by failing to deal with the Spanish and Mexican land grant question.”<sup>66</sup> The confirmation process in Texas concluded one hundred years ago. The Commission has not

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<sup>62</sup> New Mexico Legislature, Land Grant Committee, *2008 Interim Final Report to the Forty-Ninth Legislature First Session*, Santa Fe, New Mexico Legislative Council Service, 2008, <http://www.nmlegis.gov/lcs/fileExists/interimreports/LGC08.pdf>.

<sup>63</sup> Greaser and de la Teja, “Quieting Title to Spanish and Mexican Land Grants.”

<sup>64</sup> Greaser, *New Guide to Spanish and Mexican Land Grants in South Texas*, 132-148.

<sup>65</sup> Armando C. Alonzo, “Mexican American Land Grant Adjudication,” *Handbook of Texas Online*, Published by the Texas State Historical Commission, 15 June 2010, <https://www.tshaonline.org/handbook/online/articles/pqmck>.

<sup>66</sup> Greaser, *New Guide to Spanish and Mexican Land Grants in South Texas*, 147.

received any testimony indicating dissatisfaction with the state's land grant adjudication and confirmation process. **The Commission therefore does not see any benefit in adopting the New Mexico model at this time.**

#### IV. DISPOSSESSION AND INJUSTICE

The relative success of the Texas confirmation process did not, however, eliminate current sentiments of dispossession and injustice. Throughout its proceedings the Commission received testimony from individuals identifying themselves as descendants of original Spanish or Mexican land grant grantees. Some of this testimony was quite dramatic. For example, at the February 28 meeting one witness testified he interviewed his grandmother many years ago who told him her father and brothers were murdered at La Parra (now Kenedy Ranch, Kenedy County) and Santa Gertrudis (now King Ranch, Kleberg County), and that their bodies were “fed to the alligators.”

At its April 25 meeting, the Commission received testimony and written documentation from Mr. John D. Falcon, a highly-decorated Vietnam War veteran, and a descendant of Laureano de la Garza Falcon. The Falcon land grant lies between present-day Corpus Christi and Kingsville. He gave explicit testimony that his ancestor was “brutally murdered for his land.” He testified again at the Commission’s September 12 meeting describing “individual acts of savagery” and “institutional negligence” by governments resulting in unlawful dispositions. His written submission includes the following statement:

“In other issues, statutes of limitation may also limit the imposition of justice. This includes unlawful acts which may incidentally protect the interests of the present descendants of those who committed those acts. **But, this should not prevent a righteous government from justifying restitution.** Although the perpetrators of those crimes are now dead and gone, it does not correct the irreparable harm and damage suffered by the victims and their families through the state’s negligence. This of course could reverse some fortunes depending on the clarity and severity of the unlawful acts discovered. If such acts were purposefully and flagrantly ignored by the state, which in the case of some Texas Ranger atrocities, the state Legislature documented the findings, thereby **the state is obligated to make restitution.**” (Emphasis added.)

The eighteenth and nineteenth centuries witnessed the intersection of three great cultures. The first was the Native Americans from the North, dominated by the fierce Apaches and Comanches. The second was the Spanish-Mexican cultures from the South. And the third was the Anglo-Americans from the East, who poured across the Appalachians in the greatest armed migration in the history of mankind, and who historian T.R. Fehrenbach described as a “restlessly aggressive race helping themselves to the continent.”<sup>67</sup> All three of these cultures collided in present-day Texas.

The Commission is under no illusion that “individual acts of savagery” and “institutional negligence” occurred in the past. In addition, the Commission is not in a position to challenge the credibility or sincerity of the witnesses pleading with the Commission for a solution to past dispositions and injustices, real or perceived. Nevertheless, the scope of the Commission’s charge in HB 724 is not to recommend current reparations or restitution for these wrongs. Rather, it is to study and provide recommendations to the Legislature concerning the distribution of

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<sup>67</sup> T. R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (American Legacy Press, 1983), 110.

mineral proceeds that are **both** “owned by a descendant of an original grantee,” **and** delivered to the Comptroller under Property Code Chapter 74.

### A. Trespass to Try Title

Texas law currently provides a legal mechanism to a "lineal descendant of an original Spanish or Mexican land grant grantee" or any other person seeking to establish title to all or any part of a land grant or any other real property. In Texas, an action in trespass to try title is the way by which the judiciary determines title to land or other real property.<sup>68</sup> A trespass to try title action is the sole or exclusive way by which title is determined.<sup>69</sup> A trespass to try title suit must be brought against the person in possession if the premises are occupied.<sup>70</sup> Considering this, any "lineal descendant of an original Spanish or Mexican land grant grantee" seeking to establish title to any land grant or any other real property in Texas must bring a trespass to try title action in a Texas State Court against the individuals and entities that they allege are currently in unlawful and wrongful possession of those same lands — namely, the individuals and entities that are currently occupying and possessing those lands. A trespass to try title lawsuit is an option currently available to all persons, including but not limited to a "lineal descendant of an original Spanish or Mexican land grant grantee," and is the sole and exclusive way by which title to a land grant or any other real property in Texas may be determined.

### B. “Time, which buries in obscurity all human transactions, has achieved its accustomed effects upon this.”<sup>71</sup>

Ownership of unclaimed mineral proceeds delivered to the Comptroller must, under current law, derive from ownership of the underlying mineral or royalty interests from which the proceeds originated. As stated previously, status as a descendant of an original land grant grantee does not equal ownership. **If a descendant cannot prove ownership of an identifiable mineral or royalty interest, then he or she does not have the right to recover unclaimed mineral proceeds relating to that interest.**

Establishing ownership after the passage of time and generations is usually difficult, if not impossible. A recent example of this difficulty is demonstrated in the case of *King Ranch, Inc. v Chapman*.<sup>72</sup> The heirs of Helen Chapman alleged that one hundred twelve years earlier Captain Richard King defrauded their ancestor of rightful title to an interest in 15,449 acres of land known as the Rincon de Santa Gertrudis. Today, the Rincon includes portions of the King Ranch, the City of Kingsville, and the Kingsville Naval Air Station. The theory of the conspiracy and fraud was that Helen Chapman’s attorney, Robert Kleberg, was also representing King at the same time, although not in the same case. The Supreme Court, noting that King and Chapman have long since expired, held:

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<sup>68</sup> Tex. Prop. Code Ann. 22.001(a) (West 2000). Stating that "a trespass to try title action is the method of determining title to lands, tenements, or other real property."

<sup>69</sup> *Tex. Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 389 (Tex. 2011).

<sup>70</sup> *Longoria v. Exxon Mobil Corp.*, 255 S.W.3d 174, 180 (Tex. App — San Antonio, 2008, pet. denied), citing Tex. R. Civ. P. 784.

<sup>71</sup> *King Ranch, Inc. v Chapman*, 118 S.W.3d 742, 755 (Tex. 2003), quoting from *Prevost v Gratz*, 19 U.S. 481, 495 (1821).

<sup>72</sup> *Ibid.*

“In this case, the Chapman heirs have cobbled together a series of interesting historical tidbits and Texas folklore in an effort to regain title to one-half of the Rincon – an interest they claim is worth a substantial sum. Viewed separately, each of these tidbits fails to provide evidence of King’s extrinsic fraud, and aggregated, they fare no better.”<sup>73</sup>

The King Ranch in this case also established title by adverse possession, meaning “an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and hostile to the claim of another person.”<sup>74</sup> The Court restated these long standing legal principles:

“The policy behind statutes which permit adverse possession is the settlement and repose of titles.”<sup>75</sup>

“Without such laws, ‘time, instead of lending a helping hand to cure apparent defects and remove opposing claims, will only be the means and afford the opportunity of rendering [titles] less secure against mistakes, frauds, and perjuries. The older the title the less secure it becomes against such attacks.’”<sup>76</sup>

Without living witnesses, cobbling together historical tidbits and family lore rarely leads to recovery for acts of savagery and institutional negligence. Even if it could, statutes of limitation and adverse possession, which are neither new nor unique to Texas, usually present a final impenetrable obstacle.

The last Mexican land grant was adjudicated in 1848. That means the current descendants are removed from that event by over one hundred sixty-five years. Oil companies did not begin remitting unclaimed mineral proceeds to the Comptroller until 1986 with the settlement of the *Getty Oil Co. v. Richards* litigation discussed later. The possibility that current descendants continue to have any interest in minerals or royalties generating unclaimed mineral proceeds from original Spanish or Mexican land grants seems remote. Time, indeed, “has achieved its accustomed effects upon this.”

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<sup>73</sup> Ibid., 754.

<sup>74</sup> Tex. Civ. Prac. & Rem. Code § 16.02(1).

<sup>75</sup> 118 S.W.3d 742,757 , quoting from *Republic Natl. Bank of Dallas v Stetson*, 390 S.W.2d 257, 268 (Tex. 1965).

<sup>76</sup> Ibid, quoting from *Howard v Colquhoun*, 28 Tex. 134,145 (1866).

## V. ANALYSIS OF UNCLAIMED MINERAL PROCEEDS DATASET BY THE “TEXAS LAND GRANT JUSTICE ASSOCIATION”

The Commission received a document entitled “Analysis of Unclaimed Mineral Proceeds Dataset from Texas Comptroller’s Office,” which appears to have been produced by Mr. Don Tomlinson, an attorney acting for an organization called “The Land Grant Justice Association.” Mr. Tomlinson’s report reads, in part, as follows:

“In the latter part of 2009 and pursuant to the Texas Public Information Act (‘PIA’), Texas attorney Eileen Fowler, in behalf of her thousands of Spanish and Mexican Land Grant clients, requested and received from the Texas Comptroller’s Office (‘Comptroller’) a specific subset of data concerning unclaimed mineral proceeds held by the Comptroller in trust for the rightful owners of this unclaimed money. The dataset requested was simple: all unclaimed mineral proceeds presently in the Comptroller’s accounts having come from the petroleum industry.

The Comptroller provided her with a link to its mainframe computer where the Comptroller had segregated the requested information into a separate file. A specific piece of software was purchased for the analysis of the dataset. Upon downloading the dataset, the analysis began.

Basic statistics from the dataset are that it includes just more than 1,251,000 individual entries or accounts totaling almost \$561,000,000.00.<sup>77</sup> The goal of the analysis was to match Fowler’s clients against those funds. As steps one and two in the three-step process of obtaining these funds for her clients, Fowler has and continues to obtain declaratory judgments in Texas district courts undergirded by extensive genealogical research and exhaustive mineral-title searches relating to the *porciones*, i.e., the original Spanish and Mexican Land Grants from the 18th century.

**To the great dismay of Fowler’s analysts, matching her specific clients to the dataset was not possible** because, principally, the information turned over by the petroleum industry to the Comptroller along with the unclaimed mineral proceeds was poor in the extreme. Whether the principal fault for this is (1) the Unclaimed Property Act itself or (2) a lack of enforcement of it by the Comptroller or (3) a lack of compliance with it by the petroleum industry, or (4) poor data entry by the Comptroller’s office, or (5) some combination of the four, the result is the same: the Comptroller has something in the neighborhood of a half-billion dollars<sup>78</sup> of unclaimed minerals proceeds in its coffers that it cannot connect with its rightful owners because it has no valid information basis for doing so.” (Emphasis added.)

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<sup>77</sup> The Comptroller currently is holding more than \$2 billion in unclaimed monies for their rightful owners as paid over to the Comptroller by the “holders” of such monies, such as banks, utility companies, insurance companies, and the petroleum industry, pursuant to the Texas Unclaimed Property Act and litigation relating to that act.

<sup>78</sup> Estimate based on current knowledge.

This critique raises a number of questions:

- What are the specific reporting requirements of the unclaimed property statutes with respect to mineral proceeds?
- Are the oil companies complying with the reporting statutes?
- Is the Comptroller adequately enforcing the reporting statutes?
- Can it be determined if any of the “descendants” are also owners of any mineral proceeds turned over to the Comptroller?

The Commission undertook a thorough review of the Comptroller’s administration of unclaimed mineral proceeds in the Unclaimed Property Program. At the Commission’s April 25 meeting, the Commission heard testimony from Comptroller representatives Frances Torres and Bryant Clayton of the Unclaimed Property Division, and Phillip Ashley of the Fiscal Management Division. Section VI of this report summarizes the Comptroller’s testimony, and the Commission concludes that it satisfactorily answers the above questions.

## **VI. COMPTROLLER ADMINISTRATION OF THE UNCLAIMED PROPERTY PROGRAM**

Pursuant to the unclaimed property statutes codified in Title 6 of the Texas Property Code, the Texas Comptroller of Public Accounts is responsible for administering the Texas Unclaimed Property Program. Property Code Chapters 72 through 75 apply to the reporting, delivery, use, and claims process for unclaimed property.

Unclaimed property is defined as any financial asset that has been abandoned by the owner for one or more years. Some examples of property that can become abandoned are:

- Dividend, payroll or cashier's checks;
- stocks, mutual fund accounts, bonds;
- utility deposits and other refunds;
- bank accounts and safe deposit box contents;
- insurance proceeds;
- court deposits, trust funds, escrow accounts; and
- mineral proceeds.

With respect to mineral proceeds specifically, from at least 1961 until 1985, mineral proceeds were included within the statutory definition of “personal property” which was “subject to escheat” after being abandoned for seven years.<sup>79</sup> In 1985, the 69<sup>th</sup> Legislature enacted Property Code Chapter 75 relating to unclaimed mineral proceeds. As enacted and as it reads today, mineral proceeds payments held or owing by the holder that remain unclaimed three years after becoming payable are presumed abandoned.<sup>80</sup>

### **A. Reporting Requirements and the Comptroller’s Database**

Every financial institution, business, government entity or organization must determine if it holds unclaimed property as of March 1 of each year, and if so, the holder is required to mail a notice to all owners of property valued over \$250 by May 1 indicating that the property must be claimed by July 1.<sup>81</sup> The financial institution, business, government entity or organization must file an unclaimed property report with the Comptroller’s office by July 1 of each year, to the extent that it is still holding unclaimed property as of that date.<sup>82</sup>

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<sup>79</sup> Tex. Rev. Civ. Stat. Art. 3272a (Vernon 1968). In 1983, these provisions were codified with the creation of the Property Code. Act of May 25, 1983, 68th leg., R. S., ch. 576, § 6.

<sup>80</sup> Tex. Property Code §75.101(a).

<sup>81</sup> Tex. Property Code §74.1011(a).

<sup>82</sup> Tex. Property Code §74.101(a).



Property Code Section 74.101(c) specifies that a property report shall include, to the extent known by the holder:

- (1) the name, social security number, driver's license or state identification number, e-mail address and the last known address of:
  - (A) each person who, from the records of the holder of the property, appears to be the owner of the property; or
  - (B) any person who is entitled to the property;
- (2) a description of the property, the identification number, if any, and, if appropriate, a balance of each account, except as provided by Subsection (d);
- (3) the date that the property became payable, demandable, or returnable;
- (4) the date of the last transaction with the owner concerning the property; and
- (5) other information that the comptroller by rule requires to be disclosed as necessary for the administration of this chapter.”

In addition, the Comptroller may require the report to be in a particular format and that it include additional information.<sup>83</sup>

Bryant Clayton, with the Comptroller's Unclaimed Property Division, testified regarding these reporting requirements. His testimony emphasized that the data reported is owner-centric rather than property-centric. **That is to say that the focus of data reporting is to identify the last known owner of the property rather than to detail the nature of the debt owed to that owner.**

This approach is consistent with the requirements of the 1965 United States Supreme Court decision of *Texas v. New Jersey*.<sup>84</sup> In this decision, the Supreme Court adopted a priority system in which states can assert control of unclaimed property based on the principle that the unclaimed intangible personal property belongs to the owner where the owner resides and therefore, if the property is abandoned, the unclaimed property should be payable to the state of the owner's last known address.<sup>85</sup>

Mr. Clayton testified that the Comptroller's office requires holders of property to report unclaimed property using the “NAUPA 2” unclaimed property reporting format file standard. This reporting format was the result of a multi-state collaboration through the National Association of Unclaimed Property Administrators (NAUPA). The Comptroller's office provided input during its creation to ensure that the fields of the format included the information needed by the State of Texas. To his knowledge, this reporting format is used by all fifty states. By using this format, the Comptroller can easily share and receive information related to

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<sup>83</sup> Tex. Property Code §74.101(a) and (c).

<sup>84</sup> *Texas v. New Jersey*, 379 U.S. 674 (1965).

<sup>85</sup> *Ibid.*, 678. See also, Andrew W. McThenia, Jr. & David J. Epstein, “Issues of Sovereignty in Escheat and the Uniform Unclaimed Property Act,” *Washington & Lee Law Review* 40 (1983): 1429, 1443. This article also provides a useful discussion of the principles of unclaimed property and the decision in *Texas v. New Jersey*.

unclaimed property in other states and more efficiently obtain property that properly belongs to Texas residents.

Mr. Clayton presented a copy of a report provided in this format as an example of the information provided as an unclaimed mineral property report. The copy provided by the Comptroller's office is attached as *Exhibit 4* to this report. As set out in *Exhibit 4*, each record has a field for the following data: property type, owner's last name, owner's first name, owner's title (Dr., Agent, Minor, etc.), owner's address (street, city, state, zip, country), owner's birthdate, owner's social security number (SSN), owner's driver license or state identification (ID) number, owner's email address, a description of the property, dollar value of the property, the date the property was payable to the owner, and additional data for Comptroller internal use.

**These fields mirror and expand upon the requirements set forth in Property Code Section 74.101(a) and represent the data used by Comptroller staff to make decisions on claims for property.** The data required by the Property Code and the NAUPA 2 serve to facilitate the owner's ability to claim their property from the Comptroller. However, because the reports are owner-centric, they lack information (such as geo-spatial coordinates) to identify the well from which a given unclaimed mineral payment was derived. Such information is not required by the Property Code nor the multi-state NAUPA 2. **It would not be possible to use the existing data from these reports to match to any particular unclaimed mineral proceed with any particular original land grant as defined by HB 724.**

For the 2012 reporting year ending June 30, 2012, over 16,000 reports covering 3,000,000 distinct properties were remitted to the Comptroller's office. Of the total reported in this period, 239,000 properties were reported as mineral proceeds. **Of all the mineral proceeds reported as unclaimed, less than 350 properties (.14% of total mineral properties) had no owner name and no SSN.** Over 99% of mineral proceeds properties were reported with an owner name and more than 70% listed the owner's SSN. For the 1986 report year, more than 31% of mineral proceeds properties were reported with an SSN, compared to 28% of other property types reported with an SSN. Many mineral proceeds properties also include a unique owner number in the description field that denotes a specific owner.

## **B. Historical Overview of Reported Mineral Properties**

The Commission received some testimony regarding the nature and effect of a 1985 federal lawsuit that was filed and settled by 30 mineral proceeds holders, primarily oil and gas producers, against the Texas State Treasurer, Ann Richards, and the Texas Attorney General, Jim Mattox.<sup>86</sup> The Commission received statements about this settlement, hereinafter referred to as the Getty Agreement, including the unsupported claim that as a result of this settlement, the State of Texas or the State Treasurer received a cash payment of \$50 million. Mr. Tomlinson provided written testimony that the Getty Agreement resulted in the state forgiving industry for approximately \$500 million in unclaimed mineral royalties in return for a \$50 million payment. However, the Getty Agreement, attached as *Exhibit 5*, makes clear that there was no requirement for the industry to provide any lump sum cash payment to the State. Rather, as previously noted, Property Code Chapter 75 was added in 1985 to ensure that unclaimed mineral proceeds would be reported to the state to hold for the rightful owner. Prior to the addition of this new Chapter,

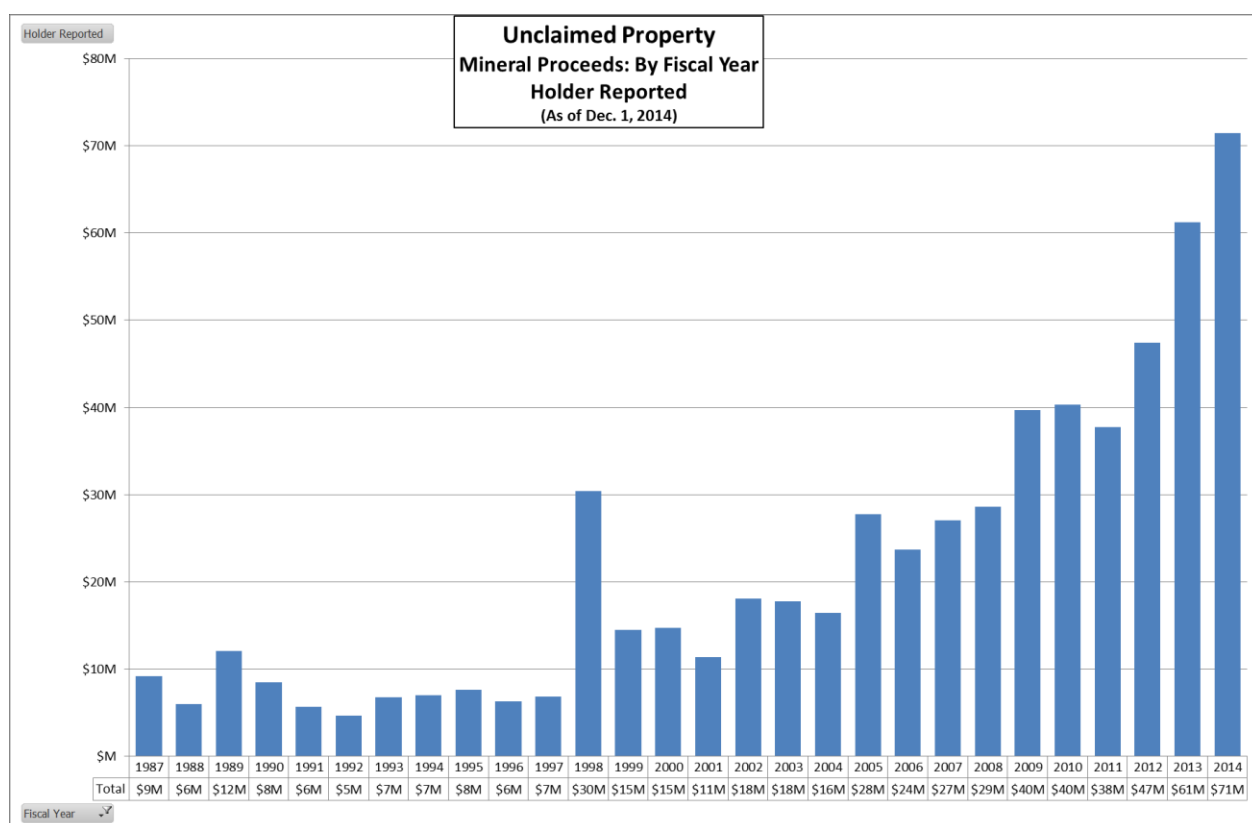
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<sup>86</sup> *Getty Oil Company, et al v. Richards, et al*, Cause No. C-85-335, S.D. Tex. 1985.

the dormancy period for reporting unclaimed mineral proceeds was seven years while the statute of limitations for mineral proceeds owners to bring suit against oil and gas companies for non-payment was four years. The amount of unclaimed mineral proceeds delivered to the state was consequently negligible under the old statute. Therefore in 1985, the Texas Legislature amended the dormancy period used in Chapter 75 for unclaimed mineral proceeds from seven to three years. The oil and gas companies brought the law suit challenging these changes.

**The Getty Agreement has been final for well over 20 years, and the Commission deems the Agreement to resolve all the issues related to that matter.** By the terms of the Getty Agreement, the named plaintiff oil and gas companies agreed to report and remit to the state all unclaimed mineral proceeds from the dates specified, primarily for the period starting September 1980.

According to testimony provided by Comptroller representatives, prior to 1986, the amount of mineral proceeds submitted as unclaimed mineral proceeds was negligible. Since 1986, however, there has been over \$609 million reported as unclaimed mineral proceeds. During the first fiscal year after the Getty Agreement \$9 million in unclaimed mineral proceeds were reported to the State Treasury.



The data received for unclaimed mineral proceeds is typically more complete than the data received in connection with other property types. For example: 98% of other property types were reported with a name, compared to over 99% for unclaimed mineral proceeds; less than 40% of other property types were reported with an SSN, compared to over than 70% for unclaimed

mineral proceeds. Other property types also lack an identifying owner number commonly reported with mineral proceeds. **The metadata show that, on average, mineral proceeds reported to the Comptroller as unclaimed property include more owner-identifying information than other property types.**

According to Comptroller records, as of December 1, 2014, holders reported 171 properties valued at \$281,011.36 without owner identifying information. Additionally, in accordance with Property Code Section 74.101(d), holders reported 441 properties valued at \$666,067.66 in the aggregate without furnishing any of the information required by Property Code Section 74.101(c).

### **C. Reporting Compliance & Enforcement**

Property Code, Title 6, Chapter 74 Subchapter H gives the Comptroller the authority to examine books and records, employ audit services, and assess penalty and interest for late filings.

Frances Torres, with the Comptroller's Unclaimed Property Division, testified regarding the Comptroller's unclaimed property audit program. The Comptroller contracts with seven companies to perform unclaimed property audits. Two of the seven companies specialize in mineral royalties. There are 450 audits currently in progress for all holders. Of this 29 are mineral proceeds audits. Audits are added every month. Audits are full scope general ledger audits. Regardless of the company type all properties are under review. The review of books and records includes ten years. During fiscal 2014, 90 audits were completed resulting in \$48.5 million collected. Of this, 26 audits were for crude oil and natural gas production companies resulting in \$5.1 million in collections. Contractors are only instructed to do detail audit procedures. No estimation or sampling is allowed under the terms of the contract program.

### **D. The Claims Process and Mineral Proceeds**

The Comptroller is required to keep a record of all property received and to deposit the property in the general revenue fund.<sup>87</sup> Statutes contain detailed provisions requiring the Comptroller to give notice to property owners of their right to recover unclaimed property in the Comptroller's possession.<sup>88</sup> A list of all owners must be compiled and made available to the public, which is currently available at [www.ClaimItTexas.org](http://www.ClaimItTexas.org).<sup>89</sup> Additionally, the statute sets forth procedures through which an owner may reclaim property by filing a claim with either the Comptroller or the original holder of the property.<sup>90</sup> The Comptroller's determination, or the Comptroller's failure to make a timely decision, may be appealed by filing suit against the State in district court in Travis County.<sup>91</sup>

Ms. Torres testified regarding claims submitted to recover previously unclaimed mineral proceeds. Mineral proceeds have an historic claims rate of approximately 40%, which is higher

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<sup>87</sup> Tex. Property Code §74.601.

<sup>88</sup> Tex. Property Code §§74.201-74.205.

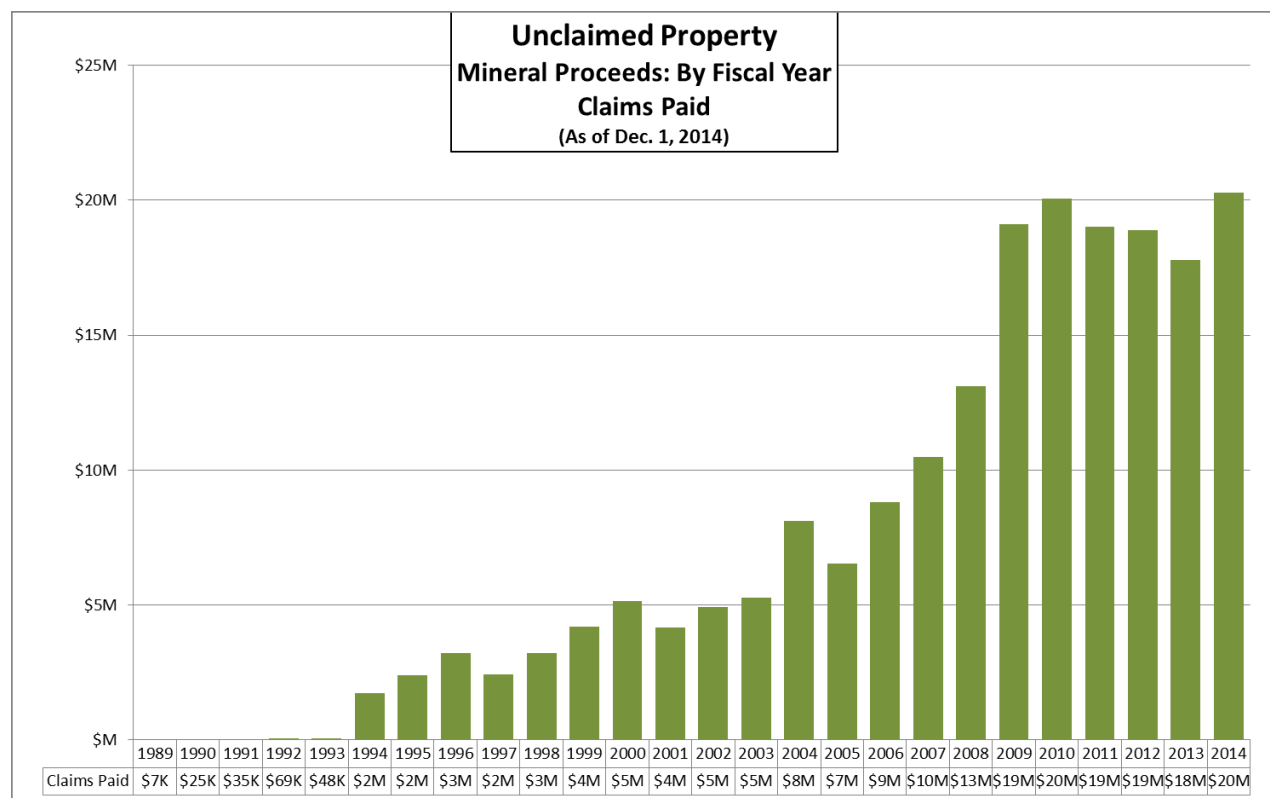
<sup>89</sup> Tex. Property Code §74.307.

<sup>90</sup> Tex. Property Code §§74.501-74.505.

<sup>91</sup> Tex. Property Code §74.506.

than any other type of unclaimed property. This is likely due to a number of factors: better-than-average owner details reported for mineral properties, diligence on the part of owners in searching for and claiming mineral properties, and/or oil companies identifying and paying owners themselves. It should be noted that not all properties reported to the Comptroller's office contain complete ownership details. Whether data is lost through mergers, acquisitions, or simply poor record keeping practices, holders cannot or do not always report full ownership information when remitting unclaimed property. **This does not mean that the property can never be claimed.**

In fact, the Comptroller has reunited rightful mineral proceeds owners with over \$199 million in reported unclaimed mineral proceeds, as depicted by the chart below.



Mr. Clayton provided the Commission a report which shows over 28,000 mineral proceeds properties that have been claimed but were originally reported with no last known address and no SSN (see *Exhibit 6*). There were over 50 examples of these properties that also had no reported owner name yet had been claimed. **In the absence of full ownership details in the unclaimed property database, it is still possible to pay claims to rightful owners by working with claimants and the holders who originally reported these properties.** Often, documents such as deeds, division orders, or other correspondence between a holder and an owner can be located to prove ownership of a property in the absence of reported owner information.

## E. Matching Descendants to Unclaimed Funds

The Comptroller's office provides extensive outreach explaining the claims process. For example, the Comptroller's website, [www.ClaimItTexas.org](http://www.ClaimItTexas.org), provides videos and instructions for claiming property (see *Exhibit 7*). This web site is designed to assist any owner of unclaimed property in filing a claim to reclaim the property, including the descendants to original land grants as defined by HB 724. As with any claimant, the Comptroller's duty is to require evidence of ownership to the property in order to release the property to the claimant. As Judge Peebles concluded, a showing of biological lineage or descendency does not show ownership of land or mineral proceeds by previous generations passed to biological heirs. **Property Code Section 74.501 states that establishing a claim to mineral proceeds by heirship requires showing ownership of a specific mineral or ownership interest by an ancestor.**<sup>92</sup>

## F. Texas Natural Resources Code "Check Stub" Reporting Requirements

The Commission received testimony at its September 12 meeting from James LeBas, representing the Texas Oil & Gas Association (TXOGA). TXOGA is the largest and oldest petroleum organization in Texas, representing over 5,000 members. The membership of TXOGA produces approximately 92% of Texas crude oil and natural gas, operates nearly 100% of the State's refining capacity, and is responsible for the vast majority of the State's pipelines.

TXOGA was specifically asked whether the "check stub" reporting requirements set forth in Natural Resources Code Section 91.502 could be incorporated into the reporting requirements for unclaimed mineral proceeds. Section 91.502 provides, in part, that each check stub, attachment to a payment form or other remittance to a royalty owner include the lease, property or well name, any lease, property or well identification number used to identify the lease, property or well, and a county and state where the lease, property or well is located. As stated elsewhere in this Report, the unclaimed property reporting requirements are owner-centric, rather than property-specific. It is the Commission's view that adding specific property information to the reporting requirements could help "match" owners to unclaimed minerals proceeds.

Mr. LeBas presented the Commission with a letter from Deb Mamula, TXOGA Executive Vice-President, dated September 11, 2014, which states, in part, as follows:

"More than 500 oil and gas operators deliver unclaimed property on behalf of thousands of owners to the state each year, including unclaimed mineral interests. During fiscal 2013, payments delivered to the state were just over \$60 million. These amounts are determined in compliance with state law and are subject to regular audit, not unlike tax audits conducted by the state.

In addition to delivering the payments to the state, in accordance with standards and state requirements, operators report to the state a single, summary line of data for each property owner annually. It has been asked whether separate data lines for each *property*, and not just for each owner, could be listed in the annual report. For example, could

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<sup>92</sup> Tex. Property Code §74.501.

separate data lines be reported that, in addition to owner information, also list individual counties and the lease, property, or well name?

We believe that the answer is yes. Information system changes would be required, both at the state and operator levels, and system changes are never costless, but because that information is already captured pursuant to Sec. 91.502 of the state natural resources code, we believe that it could feasibly [be] added to the unclaimed property report.”

### **G. Use of Unclaimed Property Pending a Rightful Claim**

Upon delivery of the reported property to the Comptroller, in compliance with Property Code Section 74.304(a), the Comptroller assumes the custody of the property and the responsibility for the safekeeping of the property. Pursuant to Property Code Section 74.601(b) **the Comptroller is required to deposit all funds received under Chapter 74 to the credit of the general revenue fund.**

This statutory provision has been the subject of judicial review and determined to be a valid exercise of State authority. Specifically, the Texas Third Court of Appeals stated that the unclaimed property act “empowers the Comptroller to use abandoned property for the benefit of the State until a claim of ownership has been asserted.”<sup>93</sup> As noted, a petition for review of this decision was denied by the Texas Supreme Court and the United States Supreme Court.

Phillip Ashley, with the Comptroller’s Fiscal Management Division, testified that the Comptroller maintains a tracking database of all unclaimed property to separately and specifically identify individual claims, as required by statute. Those records are kept in perpetuity and the related claims do not expire. The funds are included in “available certification revenue,” which is the sum total of revenue that the legislative appropriators have available for preparation of the state budget. The Comptroller’s Biennial Revenue Estimate (BRE) and Certification Revenue Estimate (CRE) both include projections for future collections of unclaimed property funds.

Mr. Ashley testified that the Comptroller’s latest projections included in the CRE estimated total unclaimed property collections of approximately \$446 million in fiscal 2014 and \$460 million in fiscal 2015, for a total of \$906 million for the 2014-15 biennium. On the expenditure side, the Comptroller receives an estimated appropriation from general revenue each biennium to pay approved claims. **The revenue from unclaimed property is deposited to general revenue, and the related claims against that revenue are paid from the same source.** That appropriation can be found in the General Appropriations Act, Senate Bill 1, 83rd Legislature, in the Comptroller-Fiscal Programs bill pattern, Strategy A.1.6 (*Exhibit 8*). The amount of the appropriation is approximately \$165 million for each year of the biennium, which is based on projections by the Comptroller and the budget committees of the expected level of spend. The appropriation is an “estimated appropriation,” which means that the appropriation is made for a specific dollar amount but the Comptroller has the authority to increase the budget in order to

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<sup>93</sup> *Clark v. Strayhorn*, 184 S.W.3d 906, 910 (Tex. App. Austin 2006), writ den’d 2006 Tex. LEXIS 473 (Tex. May 12, 2006), cert. denied, *Clark v. Strayhorn*, 549 U.S. 995 (2006).

pay additional claims if the actual amount of claims exceeds the amount of the original appropriation. **Effectively, there is no limit on the amount of claims the state can pay once rightful ownership has been established.**

## **H. Summary Conclusions**

**The Commission concludes as follows:**

- **The current statutory reporting requirements for mineral proceeds are consistent with the reporting requirements of other jurisdictions.**
- **The payment and use of unclaimed funds, including mineral proceeds, to general revenue is in compliance with Texas law, and is also consistent with the use of similar funds by other jurisdictions.**
- **Since the current reporting requirements are “owner-centric” rather than property specific, it is not possible to match the Comptroller’s existing data with any particular original land grant as defined in HB 724.**
- **Oil company holders are substantially complying with, and the Comptroller’s office is adequately enforcing, the current unclaimed property reporting requirements.**
- **The Comptroller by rule could prospectively require oil company holders to report property-specific information for unclaimed property. Such information, including the lease, property or well name, and the county in which the lease, property, or well is located, is already required for check-stub reporting under Natural Resources Code Section 91.502.**
- **The probable reason the “descendants” have been and will continue to be unable to “match” to the Comptroller’s data set is that few, if any, are current owners of the minerals or royalties in any lease, property or well from which the mineral proceeds derive.**
- **Under the current General Appropriations Act, the Comptroller is only authorized to pay “Legitimate Claims for Unclaimed Property.”**



## **VII. COMMISSION RECOMMENDATIONS**

The Commission met on December 19 with the primary goal of adopting recommendations pursuant to HB 724, Section 3.

Rules adopted by the Commission required recommendations to be formally presented by a Commission member. Members of the public were able to submit recommendations for the Commission's consideration, which may or may not have been brought up for discussion on the motion of a sitting Commission member. Throughout the proceedings, Mr. Bruun repeatedly requested submissions of written recommendations from both the public and members of the Commission.

### **A. Adopted Recommendations**

The following recommendations, in the order in which they were considered, received a majority vote and are therefore adopted by the Commission:

1. That the Comptroller by rule if possible, or the Legislature by statute if necessary, prospectively require oil company holders to report property information required to be included on "check stubs" pursuant to Texas Natural Resources Code Section 91.502, including the lease, property or well name, and the county in which the lease, property, or well is located for each well for which mineral proceeds are reported and remitted to the Comptroller as unclaimed property.

Aye: Bruun, Bock, Burton, Ramos, Bazan, Canales, Rangel, Cisneros

Nay: None

Present not Voting (PNV): Allison, Barragan, Aston, Wolfe, Blanton

2. That the Comptroller by rule if possible, or the Legislature by statute if necessary, prospectively require oil company holders to report the survey name, the General Land Office abstract number from Railroad Commission Form W-1 (Application for Permit to Drill, Deepen, Plug Back or Re-Enter, item 10 on current form), and the GPS coordinates from Railroad Commission Form W-1 for each well for which mineral proceeds are reported and remitted to the Comptroller as unclaimed property.

Aye: Bruun, Bock, Burton, Ramos, Bazan, Canales, Rangel, Cisneros

Nay: None

PNV: Allison, Barragan, Aston, Wolfe, Blanton

3. That the Legislature amend Texas Civil Practices & Remedies Code Sections 64.091, Receiver for Mineral Interests Owned by Nonresident or Absentee, 64.092, Receiver for Contingent Interest in Minerals, and 61.093, Receiver for Royalty Interests Owned by Nonresident or Absentee to:

1. Require the applicant for a receivership to furnish the Comptroller with a certified copy of any judgment granting a receivership;

2. Provide that all payments to the Clerks of Court resulting from any such receiverships be subject to the unclaimed mineral proceeds reporting requirements of the Texas Property Code;<sup>94</sup> and
3. For receiverships filed prior to the effective date of this change, that the Clerks of Court of all counties in the State of Texas report, in a form prescribed by the Comptroller, receivership proceedings filed beginning January 1, 1986 to the present.

Aye: Bruun, Bock, Burton, Ramos, Bazan, Canales, Rangel, and Cisneros

Nay: None

PNV: Allison, Barragan, Aston, Wolfe, Blanton

4. The revenue from unclaimed property is deposited in the General Revenue Fund and ultimately used for General Revenue Fund purposes. The movement and expenditure of the revenue creates deep feelings of mistrust, especially from many within the Tejano population who believe they may have legitimate claim to the unclaimed mineral proceeds. To promote transparency in government the Comptroller by rule if possible, or the Legislature by statute if necessary, should hold in a separate account those unclaimed mineral proceeds derived from areas within the original Spanish and Mexican land grants.

Aye: Bock, Burton, Bazan, Canales, Rangel, Cisneros

Nay: Bruun, Ramos

PNV: Allison, Barragan, Aston, Blanton

5. Much of the public testimony discussed lands that were taken over the course of the last 150 years either by unlawful force, intimidation, or coercion. These lands in question produce or may have produced mineral proceeds at one time. To give this subject the attention it deserves, the Legislature should suggest that the Speaker of the House of Representatives and the Lieutenant Governor set a committee interim charge so the subject and a remedy can be studied during the next interim period following the legislative session.

Aye: Bruun, Bock, Burton, Ramos, Bazan, Canales, Rangel, Cisneros

Nay: None

PNV: Allison, Barragan, Aston, Blanton

6. Testimony during the course of the Commission hearings revealed there are many questions from families about the processes related to making unclaimed mineral proceeds claims. The Comptroller's office, with additional personnel and resources, can provide enhanced outreach, including: strengthening the understanding of the current laws, proactively educating families on the processes for establishing heirship, pursuing a claim for unclaimed mineral proceeds, as well as providing general information to families with questions. In furtherance of this objective, the Comptroller's office should have the additional staff person(s) based out of their South Texas field offices where many families reside. Communication and outreach

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<sup>94</sup> Government entities are currently required to comply with Property Code Chapter 74. Property Code Chapter 76 provides government entities with the option of maintaining their own unclaimed property program.

efforts should also be made available in Spanish. Partnership opportunities with other state agencies, the State Bar, professional associations, and universities should be considered. The Legislature should appropriate the additional position and resources.

Aye: Bruun, Bock, Burton, Ramos, Bazan, Canales, Rangel, Cisneros

Nay: None

PNV: Allison, Barragan, Aston, Blanton

7. The Comptroller should enhance its auditing in two areas: 1) government or private sector entities that may be holding unclaimed mineral proceeds, and 2) more auditing opportunities for unclaimed property that is reported to the Comptroller. First, during the Commission hearings, two cases reviewed in Starr County were performed at the request of the Commission. As a result, over \$150,000 was deposited in the General Revenue Fund. Audits should focus on government entities with Spanish, Mexican, Republic of Texas, and State of Texas land grants within their jurisdictions. This review would ensure that any unclaimed proceeds are paid to the state and are available to be claimed by the rightful owners. Second, testimony was given detailing the current scope of work for verifying payment of proceeds to the Comptroller. Given the testimony alleging reporting deficiencies, as well as the current significant well activity in Texas, enhanced auditing should be implemented. The Comptroller and Legislature should take appropriate action to achieve results, as needed.

Aye: Bruun, Bock, Burton, Ramos, Bazan, Canales, Rangel, Cisneros

Nay: None

PNV: Allison, Barragan, Aston, Blanton

## **B. Minority Recommendations**

The Commission's rules allowed for minority recommendations to be included in the final report. Minority recommendations are defined as those recommendations which received a vote by the Commission following a motion and a second, but failed to garner a majority of the Commission's support. The following are those recommendations in the order in which they were discussed:

1. That Property Code Section 75.101 be amended to reduce the holding period for unclaimed and presumed abandoned mineral proceeds from three years to one year.

Aye: Bazan, Cisneros

Nay: Bruun, Bock, Burton, Ramos, Canales, Rangel

PNV: Allison, Barragan, Aston, Wolfe, Blanton

2. That the Legislature study the creation of a Special Claims Court dedicated to resolving the claims by proven descendants for unclaimed and presumed abandoned mineral proceeds not reported to the Comptroller. In a setting much like the trespass to try title action allowed in the District Courts of Texas, the Special Claims Court would center on: 1) establishing ownership of mineral proceeds proven 2) traced with legal certainty of uninterrupted title

down and to descendants who have 3) proven their rightful heirship according to established genealogical principles.<sup>95</sup>

Aye: Bock, Bazan, Canales, Cisneros

Nay: Bruun, Burton, Ramos, Rangel

PNV: Allison, Barragan, Aston, Blanton

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<sup>95</sup> See Exhibit 9 for additional details on the Special Claims Court.

## **VIII. EXHIBITS AND ATTACHMENTS**

### **EXHIBIT 1: Unclaimed Mineral Proceeds Commission Minutes**

#### **Unclaimed Mineral Proceeds Commission January 31, 2014 State Capitol Building, Room E1.030**

Pursuant to notice posted on January 1, 2013 in the Texas Registry, the Commission convened for organizational purposes and to hear invited testimony. No public testimony was taken during this hearing.

The initial roll call was answered as follows: Bruun, Bock, Burton, Ramos, Bazan, Canales, Allison, Rangel, Cisneros, Barragan, Aston, Wolfe, O'Neal, Blanton, and Sheer

10:00 AM - Call to order, roll call, and introduction of Commission members: Lance K. Bruun, Presiding Officer. Each Member introduced themselves to the Commission and the audience.

10:22 AM – An overview of House Bill 724 and Unclaimed Mineral Proceeds Commission was presented by Mr. Bruun.

10:25 AM – Then followed a discussion of open government requirements presented by Chris Conratt, Assistant General Counsel, General Counsel Division, Comptroller of Public Accounts.

10:30 AM – The Commission then heard an overview of Texas Unclaimed Property Program presented by Frances Torres, Director of Unclaimed Property, Comptroller of Public Accounts.

10:50 AM – The Commission then received invited comments from Rebecca Donachie, Administrative Director for the Honorable Ryan Guillen - State Representative, District 31., and a sponsor of House Bill 724. Representative Guillen was unable to attend, but will be invited to the next meeting. Dr. Jose Barragan, General Land Office, then made a presentation on Land Grants

11:00 AM – There followed a lengthy discussion concerning the purpose of the Commission and the Commission's charge as set forth in House Bill 724. Earlier Mr. Cisneros had remarked that he hoped the Commission could find an historical solution to past injustices. Mr. Bruun responded that the specific terms of House Bill 724 do not provide for addressing allegations of past injustices or considering ancient title disputes. Without resolving this question the Members consented to inviting public comment at the next meeting concerning these issues, and to extending an invitation to Attorney Eileen McKenzie Fowler to present comments.

11:48 AM – Mr. Bruun then discussed future Commission meetings. The Commission consented to setting the next meeting for February 28, 2014, at 10 o'clock a.m.

11:52 AM - Adjourn: Lance K. Bruun, Presiding Officer

**Unclaimed Mineral Proceeds Commission**  
**February 28, 2014**  
**State Capitol Building, Room E1.030**

Pursuant to notice posted on February 13, 2014 in the Texas Register, the Commission convened to hear invited and public testimony.

The initial roll call was answered as follows: Bruun, Bock, Burton, Ramos, Bazan, Canales, Allison, Rangel, Cisneros, Barragan, Aston, Wolfe, Blanton, and Sheer.

10:00 AM - Call to order, roll call, and deferral of discussion of the previous meeting's minutes until later in the meeting. Mr. Bruun discussed the open government training requirements, which all members must complete and submit certificates of completion for the Commission records. Additionally, Mr. Bruun proposed, pursuant to Government Code Section 552.012, that the Commission designate the public information coordinator of the Texas Comptroller of Public Accounts to satisfy open records training requirements. The motion passed.

10:05 AM – Mr. Bruun suggested the adoption of rules for the Commission; a proposed draft will be distributed prior to the next meeting for consideration and will include the possibility of minority reports to be accepted along with the Commission's report and recommendations.

10:07 AM – The Commission heard invited comments from Representative Ryan Guillen - State Representative, District 31, the author of House Bill 724. Rep. Guillen provided a brief history of mineral ownership rights, the responsibility of the Texas Comptroller of Public Account's Unclaimed Property Division to maintain records and distribute unclaimed mineral proceeds, and the reporting requirements oil companies were required to adhere to when filing reports and remitting unclaimed mineral proceeds. He outlined the legislative intent of the Commission: to shed light on relevant factual information; determine how much money is in the possession of the state; identify legal issues and resolutions; assess the reporting process; and recommend viable legislative solutions.

10:20 AM – The Commission then heard invited testimony from Attorney Eileen McKenzie Fowler, who provided a history of land grants, including Spanish and Mexican laws and Texas issued patents that protect original grantee's and heirs' ownership rights. She indicated that the Texas Constitution of 1866 relinquished mineral rights to the owners of the soil, including descendants of original grantees. Ms. Fowler further claimed that since the current system of reporting and remitting unclaimed mineral proceeds to the Comptroller's office became effective in 1986, poor record keeping and lack of enforcement has allowed oil companies to retain billions of dollars in unclaimed funds. She stated that her clients have received declaratory judgments of heirship based on lineage and maintain mineral ownership interests from the original land grants.

10:41 AM – There followed a discussion between Mr. Bruun and Ms. Fowler regarding the legal authority for claiming descendants of original land grantees continued to own mineral interests. Mr. Bruun questioned Ms. Flower concerning a brochure furnished to the Commission by Ms. Fowler entitled "*HEIRS*" which stated, in part: "Normally under Texas property law when a

person sells a piece of land and no mention is made of the transference of the minerals contained, the right passes to the purchaser. In the case of land grants, if no mention is made of the transference of minerals by sale or conveyance of the land, the minerals are retained by the Seller and pass on to his or her heirs.” (Emphasis added.) Mr. Bruun questioned the legal basis of that claim. Ms. Fowler pointed to the GLO’s New Guide to Spanish and Mexican Land Grants in South Texas (2009) by Galen Greaser, which, she claimed, highlights case law treating land grants and descendants differently than other cases involving mineral ownership disputes. She disagreed with Mr. Bruun’s assessment of adverse possession rulings in mineral cases, indicated that those rulings do not reference grantees or descendants. Ms. Fowler also asserted that there were “vast areas” of South Texas that are uninhabited and “untitled”. She also testified that “A lot of areas in South Texas have no known owners, and those belong to the descendants of the original grantees by patent.” She further claimed that there are hundreds of oil and gas wells that are “unclaimed” according to Railroad Commission records. These remarks were met with skepticism by Mr. Bruun and other members of the Commission. In response to Ms. Fowler’s comments concerning information obtained by the Comptroller, Mr. Blanton remarked that a vast majority of information remitted by oil companies contain identifying information. Ms. Fowler maintained that the Comptroller’s office is not demanding the right information.

11:20 AM – Mr. Sheer requested documentation on Ms. Fowler’s previous assertion that the *Getty v. Richards* litigation settlement resulted in a \$50 million deposit to the Comptroller for unclaimed mineral proceeds.

11:27 AM – Mr. Ramos questioned the declaratory judgments received by Ms. Fowler’s claimed 20,000 clients, and why no other legal attempts were made to obtain determinations of ownership. Ms. Fowler held that a declaratory judgment should be sufficient to retrieve unclaimed proceeds, but that the Comptroller’s office would not accept the documentation because information collected by the Comptroller was insufficient.

11:50 AM – Mr. Bruun stated the names of witnesses not testifying but submitting written comments for the record. He briefly summarized some of those comments. The Commission then took a short recess.

12:09 PM – The Commission heard public testimony, requesting that testimony be limited to five minutes. Several individuals, including members of the Balli family, offered statements of support for the Commission’s efforts. Several individuals offered testimony of alleged criminal acts committed in an effort to steal land from the descendants. For example, one witness testified he interviewed his grandmother many years ago, and she told him her father and brothers were murdered at La Parra (Kenedy County) and Santa Gerdrudis (Kleberg County) and their bodies were fed to the alligators. Yolanda Martinez offered testimony on Spanish law, suggesting that land grants be subject to the laws of the country originating the grant. Several individuals testified that they are seeking justice for past wrongs as well as royalties held with the Comptroller’s office, which they have been unable to obtain with declaratory judgments of heirship; each questioned what information would satisfy the requirements of receiving the unclaimed mineral proceeds. Robert Gonzalez testified that his personal investigation turned up forged documents recorded with the state without giving specific examples; however, accurate

documentation was available in Mexico, he said, including original titles and deeds. He emphasized that mineral ownership rights were the issue, not current land or surface ownership.

1:35 PM – Public testimony concluded. The Commission took up a discussion on HB 724 and the charge of the Commission. Mr. Ramos stated that there seems to be an expectation to come up with a framework for payouts, not an explicit directive. However, he suggested that may be one of the Commission's goals. Mr. Bock pointed to the bill's charge to prescribe efficient procedures for determining ownership and distributing unclaimed mineral proceeds. Mr. Cisneros offered his previous work to be included in a discussion of such procedures at the appropriate time. Mr. Cisneros suggested a change in current law that would require oil companies to remit unclaimed proceeds immediately to the Comptroller rather than providing for a waiting period. Mr. Bruun suggested a subcommittee or working group examine Comptroller data, determine what information is missing, and report on findings at the next meeting.

1:57 PM – The Commission reviewed the minutes from the previous meeting on January 31, 2014 and, with no additions or objections, adopted the minutes.

1:58 PM – Mr. Bruun discussed future Commission meetings and stated that all future meetings would be recorded and broadcast for those not in attendance. The Commission consented to setting the next meeting for Friday, April 25, 2014 at 10 o'clock a.m.

2:02 PM - Adjourn: Lance K. Bruun, Presiding Officer.



**Unclaimed Mineral Proceeds Commission**  
**April 25, 2014**  
**State Capitol Building, Room E1.030**

Pursuant to notice posted on April 11, 2014 in the Texas Register, the Commission convened to hear invited testimony.

The initial roll call was answered as follows: Bruun, Bock, Burton, Bazan, Canales, Allison, Cisneros, Barragan, Aston, Wolfe, Blanton, and Sheer.

10:00 AM - Call to order, roll call, and adoption of the previous meeting's minutes. Mr. Bruun put forward draft rules for the Commission's review, which will be discussed at the next meeting.

10:05 AM – The Commission heard invited comments from Phillip Ashley, Director of Fiscal Management, Texas Comptroller of Public Accounts, who provided an overview of unclaimed property funds and the state appropriation process. He explained that statute requires all unclaimed property funds to be deposited to the General Revenue account. It is estimated that \$446 million worth of unclaimed property will be collected in fiscal year 2014 with an additional \$460 million in fiscal year 2015. The estimated appropriation from General Revenue to pay approved claims is based on projections from the Comptroller and is currently \$165 million per year; the Comptroller has the authority to increase the budget if claims exceed the appropriation. Mr. Ashley also noted that there is no statute of limitations on making a claim on unclaimed mineral proceeds.

10:17 AM – The Commission next heard invited testimony from Bryant Clayton and Frances Torres, Texas Comptroller of Public Accounts. Mr. Bruun noted that the request for testimony was spurred by a document received by the Commission, *Analysis of Unclaimed Mineral Proceeds Dataset from Texas Comptroller's Office*, by Mr. Tomlinson, which claims that noncompliance and lack of enforcement of the law by both the oil and gas industry and the Comptroller's office has left around \$0.5 billion in unclaimed mineral proceeds that cannot be connected to rightful owners. Mr. Clayton provided an overview of how the Comptroller's office receives, reads, and processes data from oil companies relating to unclaimed mineral proceeds. He noted that information provided by the oil company is specific to the owner of the property and not to the location where minerals are produced, which could be in another state. Ms. Torres provided an overview of the type of information necessary for an individual to file a claim, which includes copies of social security and driver's license cards, probate documents, copies of division orders signed with the oil and gas company or conveyance documentation. She noted that payment of claims relies on information provided by oil and gas companies; staff works with both claimants and holder companies to research claims and obtain additional identifying information.

11:05 PM – Mr. Bruun discussed a provision in Natural Resources Code, which requires oil and gas companies to provide well location and specifying information to the owner on the check stub for royalty payments. He indicated that this same information might be useful in assisting the Comptroller of matching claimants to unclaimed mineral proceeds held with the state. He concluded that the oil companies are in compliance with current statute despite previous

allegations that they had failed to comply with reporting requirements. Ms. Torres noted that a February 2014 analysis showed that of the 2.2 million mineral interest properties approximately 303 properties worth about \$704,000 contain no information about the owner.

11:23 PM – Ms. Torres provided an overview of the audit process and then discussed mineral proceeds received after the *Getty v. Richards* settlement. The settlement provided a go-forward approach and forced 237 companies to report a total of \$7.9 million in unclaimed mineral proceeds in 1986. Since that time \$559 million in unclaimed mineral proceeds have been remitted and the state has returned \$226 million of that to the rightful owners. The settlement did not contain reference to a \$50 million deposit and none was ever received by the state. Mr. Cisneros questioned why the money was not earning interest for the descendants who had a claim on the property. Mr. Blanton noted that a court case determined that claimants are not entitled to receive interest on unclaimed funds. The Commission took a short recess.

12:01 PM – The Commission next heard testimony from Colin Lineberry, Railroad Commission of Texas, who spoke on the agency’s jurisdictional authority over the oil and gas industry. He explained that operators are required to report production and that records are kept based on operator and well location.

12:03 PM – Mr. Bruun inquired about mineral ownership information maintained by the agency. Mr. Lineberry stated that oil companies do not identify who owns the underlying minerals, it is not information the agency keeps unless the lease is named after the mineral owner. Mr. Bruun asked about Mr. Lineberry’s knowledge of unknown wells in conjunction with testimony from the previous hearing by Ms. Fowler, in which she indicated that the Juan Jose Balli Grant approximately 250 wells in Kenedy County that are “unknown or unclaimed”. Mr. Lineberry indicated that the Railroad Commission does not keep that type of information or any information that would lead to such an assessment.

12:12 PM – Mr. Cisneros asked about the third party data provider, [drillinginfo.com](http://drillinginfo.com), which was previously mentioned by Ms. Fowler in relation to identifying unknown or unclaimed wells. Mr. Lineberry stated that while [drillinginfo.com](http://drillinginfo.com) accesses and downloads Railroad Commission data, he is not familiar with the website and does not know of any Railroad Commission records that would provide that information. Mr. Bruun questioned the assertion of unclaimed wells, noting that no evidence has been provided to support the claim that either the Railroad Commission or another source have information pertaining to unclaimed wells or unknown mineral owners. Mr. Sheer asked about the “u” designation on Railroad Commission map records. Mr. Lineberry stated that the well designation of “u” is for “upper” and does not mean unclaimed or unknown.

12:18 PM – Mr. Bruun asked if an operator may drill a well without consent from 100% of the mineral owners. Mr. Lineberry stated that operators must have a lease from some percentage of the mineral owners and that without a lease they must operate as a co-tenant. Drilling a well might be economically prohibitive if an operator does not secure a lease for a majority of the minerals. He was unaware of an instance in which an operator has drilled without knowing who owned any of the minerals. Ms. Aston, responding to a previous inquiry by Mr. Cisneros relating to unclaimed real estate in Texas, stated that all surface land has been granted out or dedicated to the permanent school fund.

12:24 PM – Invited testimony from Mr. Don Tomlinson was deferred to the next meeting upon his request. The Commission then heard testimony from Mr. John Falcon, who was invited on behalf of Mr. Cisneros. Mr. Falcon spoke about the historical injustices committed against the families and descendants of original land grantees, including murder, fraud, and discrimination. He suggested that the state should confirm descendant ownership from 1866 and ensure that unclaimed mineral proceeds be held in a trust for the rightful owners. Mr. Bruun took note of the historical wrongs, but emphasized the Commission's limitations. He questioned the idea that status as a descendant equals ownership of minerals and royalties as well as the idea that unclaimed property funds be appropriated to correct past wrongs.

12:42 PM – Mr. Burton next discussed a memorandum written by himself, Mr. Ramos, and Mr. Rangel, which addresses legal issues related to the ownership of minerals in Texas. The memo addressed several assertions made by Ms. Fowler and Mr. Farias including the claim that in the case of land grants, if no mention is made of the minerals by sale or conveyance of the land, the minerals are retained by the seller and passed on to the heirs. The statement runs contrary to Texas property law and the authors were unable to find any legal authority to sustain such a statement. The memo also addressed the 1866 Constitutional amendment conveying mineral interests to then-surface owners and the fact that a declaratory judgment, while establishing lineage, does not equate to ownership of mineral interests. Mr. Burton and Mr. Bruun requested that anyone knowing of the legal authority to contradict or enlighten the memo's findings share that information with the Commission.

1:01 PM – Discussion of Ms. Fowler's response to Mr. Bruun's requests was postponed until the next meeting at Ms. Fowler's request. The Commission moved on to discuss the draft order submitted by Judge Peebles relating to declaratory judgment cases. The draft order is intended to inform petitioners of the legal facts and the potential difficulty in making a claim against unclaimed royalty funds. The order states that declaratory judgments show biological lineage not the legal inheritance or ownership and the judgments do not address the possibility of a legal conveyance.

1:12 PM – The Commission next discussed the white paper submitted by Mr. George Farias, who also provided testimony in support of his conclusions. Mr. Farias clarified that the statement concerning the conveyance of minerals was taken from the Land Grant Justice Association website authored by Mr. Tomlinson. He spoke about the descendants of original land grantees being the rightful owners of unclaimed wells and proceeds. Mr. Farias insisted that a \$50 million deposit from the *Getty v. Richards* settlement was misappropriated and questioned whether oil companies and counties were properly remitting unclaimed funds to the Comptroller.

1:25 PM – Mr. Bruun questioned the concept of unclaimed wells, noting that Mr. Lineberry of the Railroad Commission testified that the agency does not know of any unclaimed wells and Ms. Fowler was also unable to provide documentation of unclaimed wells. Mr. Bruun requested any information or example to support the assertion. Mr. Farias then mentioned receivership proceedings, which Mr. Bruun and Mr. Burton explained are rare and occur when an oil company cannot identify a small percentage of the mineral owners for a particular well. The

company receives court permission to drill and tenders money to the court registry that is attributable to the unleased portion of the minerals.

1:48 PM – Mr. Bruun discussed the next Commission meeting, which will include public testimony. He asked Commission members for suggestions on invited testimony as well as draft recommendations for information to be included in the Commission’s final report to the Legislature. The Commission consented to setting the next meeting for Friday, June 27, 2014 at 10 o’clock a.m.

1:51 PM - Adjourn: Lance K. Bruun, Presiding Officer.

**Unclaimed Mineral Proceeds Commission**  
**June 27, 2014**  
**State Capitol Building, Room E1.030**

Pursuant to notice posted on June 19, 2014 in the Texas Register, the Commission convened to hear invited and public testimony.

The initial roll call was answered as follows: Bruun, Burton, Ramos, Canales, Allison, Rangel, Cisneros, Barragan, Aston, Wolfe, Blanton, and Sheer.

10:06 AM - Call to order, roll call, and adoption of the previous meeting's minutes.

10:08 AM – The Commission heard invited comments from Tricia Davis with the Texas Royalty Council, which represents more than 672,000 royalty owners in the state of Texas. She explained how her family lost their mineral interests when they failed to retain those rights when the land was sold. She spoke about the Council's efforts to assist land owners in reserving mineral estates and securing oil company division orders using an easy to understand model form. Ms. Davis noted that her family makes a concerted effort to check the Comptroller's Unclaimed Property database for possible unclaimed mineral proceeds, which her family has been able to successfully recover using the current system. She noted that over \$11 billion was paid out to royalty owners from oil and gas companies in 2013.

10:19 AM – The Commission next heard invited testimony from Eileen McKenzie Fowler, who asserted that the Comptroller's presentation from the previous meeting was irrelevant and did not directly address identifying owners of mineral proceeds. She reaffirmed her position that the Comptroller's office has failed to maintain accurate and complete records; specifically, records with Hispanic surnames that are missing information. She stated that statute requires well location information to be kept by the Comptroller, but was unable to specify where such a requirement was listed. Ms. Fowler acknowledged that she was attempting to establish a pattern of neglect attributed to the treatment of descendants of original land grantees.

10:30 AM – Ms. Fowler accused county registries, oil companies, and banks of not properly remitting unclaimed mineral proceeds to the Comptroller. Citing a bank in Weslaco that had an account containing \$800 million in unclaimed mineral proceeds that was never remitted to the state, she suggested that the money was absorbed by public officials. Mr. Sheer questioned this story, asking who was responsible for submitting the money to the bank. Ms. Fowler stated that she did not know, but it was a fact that the money was there. She contended that this is endemic throughout South Texas, where judges are widely known for their mistreatment of descendants.

10:35 AM – Ms. Fowler insisted that it is the Commission's responsibility to track down royalty payments that have been remitted to court registries across the state and find any other missing unclaimed mineral proceed money. Mr. Bruun reiterated the statutory duties of the Commission, which focus on identifying owners of unclaimed mineral proceeds currently held by the Comptroller and does not authorize the investigation of banks.

10:50 AM – Ms. Fowler spoke about her experiences filing declaratory judgments for her clients with Judge David Peeples. She suggested that a member of the Commission, Mr. Donato Ramos, had pressured Judge Peeples to stop hearing the declaratory judgment cases. Mr. Ramos responded to Ms. Fowler’s claim by explaining that he had never spoken to Judge Peeples regarding unclaimed mineral proceeds or declaratory judgments and asserting that there was no basis for her accusations. Additionally, Ms. Fowler maintained that the draft order written by Judge Peeples, discussed at the previous meeting, must have been deceptively obtained and presented to the Commission. Mr. Bruun explained that the order had been submitted by Judge Peeples after the Comptroller’s office requested a copy of the draft.

11:18 AM – The Commission next discussed documents submitted by Ms. Fowler from drillinginfo.com, which obtains information on oil and gas wells directly from the Railroad Commission. Ms. Fowler held that the records proved unknown ownership of hundreds of wells currently in production. While Ms. Fowler agreed that an unknown well type designation did not equate to unknown owners, she maintained that missing information listed under “current lease name” did equate to unknown ownership. Mr. Bruun, referring to previous testimony by the Railroad Commission, stated that the agency is not responsible for keeping ownership information so it would not have been passed on to drillinginfo.com to be compiled in the records Ms. Fowler presented.

11:36 AM – The Commission continued to discuss documents submitted by Ms. Fowler, including patents and conveyance documents dating back to 1879. Members agreed that if an individual owned land in 1866, then they were indeed the owners of the minerals. The question has become when, if ever, that land was sold and the minerals conveyed to the new owner; the importance of who currently owns any unclaimed mineral proceeds is central to the ability to claim those proceeds. Ms. Fowler recommended that the legislature appropriate \$2 billion, in an interest earning fund, to the descendants. Ms. Fowler later corrected the amount to \$10 billion. She suggested that the money be distributed, proportional to production from the original land grant land, to individuals who can prove lineage based on the Comptroller’s requirements.

11:52 AM – The Commission took a brief recess.

12:06 PM – The Commission reconvened to hear invited testimony from Robert Gonzalez. Mr. Gonzalez stated that several key legal arguments made by Ms. Fowler regarding land grant heirs, mineral interest ownership, and royalties were not based in fact. He noted that his family was at one point a client of Ms. Fowler’s, having paid her over \$200,000 despite being unable to recover documents supposedly collected by Mr. Wylie, the land man working for Ms. Fowler at the time.

12:51 PM – The Commission then discussed the *Clark v. Strayhorn* case, which concluded that any interest collected on unclaimed money held by the Comptroller goes to the credit of general revenue and is not paid to the owner making a claim.

12:55 PM – The Commission heard public testimony. Several individuals, including Reynaldo Balli, Adalgisa Alanis and Yolanda Martinez, reiterated the necessity for compensating land

grant heirs whose ancestors suffered injustices. Nicholas Balli provided a sworn affidavit containing the following recommendations to the Commission:

- “1) Recommend to the Texas State legislature to set up a commission to investigate all land fraud cases that affected all Spanish and Mexican Land Grants in Texas.
- 2) Recommend to the Texas State legislature to set up a commission to compensate all families of Spanish and Mexican Land Grants in Texas due to fraud, past or present.
- 3) Determine the legality of the 1840 Texas Constitution that affets of all Spanish and Mexican Land Grants in Texas.
- 4) Determine the legality and the constitutional interpretation of the general laws of the legislature of the State of Texas, prior to 1879, are contained in 26 volumes, over 4,200 pages. The laws and decrees of Coahuila and Texas, and the colonization law of Tamaulipas, are found in a volume of 360 pages, printed in 1839 by direction of the congress of Texas. The laws of the congress of the Republic of Texas are contained in twelve volumes, with an aggregate of 1,504 pages. All of the State copies of laws were destroyed by the burning of the capitol on the 9<sup>th</sup> of November, 1881.”

1:50 PM – Patricia Champion, a professional genealogist and private investigator, provided testimony which included several recommendations for the Commission. In the case that the Comptroller is unable to determine who the money belongs to: a proven descendant of an original land grantee may receive a full property tax exemption on residence homestead property or receive a waiver or tuition and fees to state schools; the Comptroller may request additional information from holders; increase the number of audits conducted on the oil and gas industry; impose stricter requirements over land men; impose penalties on financial institutions for not doing due diligence in finding heirs. Ms. Champion stated that not all heirs are lineal heirs and therefore are not entitled to receive money or compensation.

2:05 PM – Cynthia Requenez provided testimony against the practices employed by Eileen McKenzie Fowler. She stated that Ms. Fowler had tricked her family into paying money and suggested she be disbarred.

2:13 PM – Discussion of the Commission rules will be postponed until the following hearing. Mr. Bruun then discussed the next Commission meeting, which will focus on developing a draft report and continue to investigate the issue of unclaimed mineral proceeds. The net meeting is scheduled for Friday, September 12, 2014 at 10 o'clock am.

2:18 PM - Adjourn: Lance K. Bruun, Presiding Officer.

**Unclaimed Mineral Proceeds Commission**  
**September 12, 2014**  
**State Capitol Building, Room E1.030**

Pursuant to notice posted on September 4, 2014 in the Texas Register, the Commission convened to hear invited testimony.

The initial roll call was answered as follows: Bruun, Bock, Bazan, Canales, Allison, Rangel, Cisneros, Barragan, Aston, Wolfe, and Blanton.

10:02 AM - Call to order, roll call, and adoption of the previous meeting's minutes. Mr. Bruun provided each member of the Commission with a copy of the *New Guide to Spanish and Mexican Land Grants in South Texas* and indicated that public comment would be heard at the next Commission hearing.

10:04 AM – Mr. Bruun discussed a suggestion that would apply some of the check stub reporting requirements in Natural Resources Code Section 91.502 to oil and gas company reports submitted to the Comptroller's Unclaimed Property Division. The additional information would make the Comptroller's information less owner-centric and hopefully make it easier for unclaimed mineral interest proceeds to be connected to owners. The Commission heard invited comments from James LeBas on behalf of the Texas Oil and Gas Association, who addressed this possibility. He explained that royalty interests are established in accordance with title opinions developed by petroleum land men and attorneys based on county records. If a royalty owner cannot be found, the share is held in reserve until an owner is established or the holding period expires and the money is turned over to the Comptroller according to state law. In fiscal year 2013, more than 500 operators collectively turned over about \$60 million in unclaimed property. Mr. LeBas stated that, because operators are already required to supply well location information on royalty check stubs, the same information could be made available to the Comptroller for purposes of unclaimed mineral interest proceeds.

10:09 AM – Mr. Cisneros expressed concern over the 3 year holding period. He discussed previously drafted legislation that would have eliminated the holding period and required operators to immediately turn royalty money derived from unclaimed mineral interests over to the state. Mr. Bazan requested that a copy of that draft legislation be shared with the Commission.

10:12 AM – Mr. Bruun asked if the requirement for well location information could be implemented through a Comptroller rule. Mr. Blanton stated that the agency would look into that possibility.

10:17 AM – The Commission next heard invited testimony from Mr. Wiley McIlwain, who wanted to correct some misconceptions about him that were stated in testimony by Robert Gonzalez at the previous hearing. He rebutted Mr. Gonzalez's claim that he was a convicted felon and provided documentation to that effect. Mr. McIlwain also spoke about his unique perspective concerning unclaimed mineral interests. Through his title examination work and interactions with descendants, he confirmed that a myth has been circulated which incorrectly claims that minerals attached to Spanish and Mexican land grants are treated differently. Mr. Cisneros took issue with the work Mr. McIlwain has conducted on behalf of descendant families,



stating that the title examination work is perpetuating the problem. Mr. Bruun asked if Mr. McIlwain was able to recover any unclaimed mineral proceeds that were owned by his family. Mr. McIlwain was not able to recover any mineral interests because the land had legally been conveyed and the descendants no longer had a claim to those interests.

10:41 AM – Mr. John Falcon appeared before the Commission to offer his perspective of the draft report and provide recommendations to the Commission. He questioned the process by which unclaimed mineral proceeds are held by the state, taking particular issue with statute that requires funds to be deposited into the General Revenue account. Mr. Blanton and Ms. Allison both addressed this issue, explaining that there is no statute of limitations on claiming unclaimed property funds and that depositing the funds into the General Revenue account did not prohibit an owner from claiming the funds; it is simply an accounting procedure. Mr. Falcon distinguished between the forces that separated original owners from their lands: 1) individual acts of savagery causing the loss of land or unlawful conveyance or seizure of land; and 2) institutional negligence concerning the treatment and protection of Tejanos in South Texas, who were abandoned by all governments. He also stressed that individuals are not entitled to unclaimed mineral interest proceeds simply by virtue of being classified as a descendant.

11:27 AM – Mr. Bruun concurred with the two lines of thought regarding the descendant families. He questioned how to distinguish between the descendants who suffered the types of savagery or institutional negligence described by Mr. Falcon and those that did not, particularly in the context of securing compensation. There followed a discussion of ownership rights versus descendant rights, after which Mr. Bruun concluded that the only source of justice in the eyes of the descendants would be for the state to set aside a sum of money against which people can make claims. The question then becomes, who is entitled to make a claim.

11:46 AM – Mr. Cisneros referenced HB 2611, 82R, that outlined a formula to pay claims. He explained that the system would be based on production values on land grants over a period of time and the number of known and unknown descendants of the original land grantee. He suggested that a percentage of unclaimed mineral proceeds be set aside at the end of each fiscal year to fund claims made by descendants. Mr. Blanton noted that the vast majority of unclaimed mineral proceeds held in Comptroller's office contain some owner identifying information and the state would need to be careful not to set aside some person's specifically described property with the intention of appropriating it to another person. Mr. Bock expressed concern about whether such a fund would establish a precedent for other groups to make similar claims against the state.

12:20 PM – The Commission took a brief recess.

12:37 PM – The Commission reconvened to discuss documents previously submitted by Alda Barrera that identified two cases in Starr County in which receiverships for mineral interest proceeds were established with the court registry. The Starr County District Clerk's office was defensive about the files and Mr. Bruun suggested that the Commission send an authority to look into the matter with Starr County. Mr. Bazan made the following motion:

“Mr. Chair, I'd like to make a motion that the Commission request the Office of the Comptroller and the Attorney General to investigate and report to the Commission

concerning litigation brought by the Starr County in cause numbers 3059 and 3066, both in the 229 Judicial District of Starr County, Texas, including the determination of (1) the nature of the litigation, and (2) whether the litigation involves any unclaimed mineral proceeds that either have or should have been remitted to the Comptroller as unclaimed property.”

12:41 PM –Mr. Cisneros seconded the motion and, hearing no objections, the motion passed.

12:43 PM – The Commission then discussed the adoption of the rules, which Mr. Bruun explained had been edited to meet the needs of the Commission. Mr. Rangel made a motion to adopt the rules as written. The motion was seconded and passed without objection.

12:46 PM – The Commission reviewed the draft report section by section. Mr. Bruun emphasized that the draft report was a preliminary document that reflected the views of those members who contributed to the draft. He requested that any suggested edits or recommendations be submitted in writing so they may be incorporated into the report.

12:54 PM – Members discussed Ms. Fowler’s interaction with the Commission and how to best incorporate her testimony into the report. Mr. Bruun expressed a desire for a general consensus regarding Ms. Fowler and the misconceptions she presented that have created impediments to the goals outlined in HB 724. Mr. Bock suggested more positive clarification on what the Commission asserts to be law concerning the treatment of mineral interests. He explained that certain statements in the report serve to negate inaccurate testimony but fail to fully detail the Commission’s stance on matters of law and fact.

1:01 PM – Mr. Bruun highlighted a conclusion in the report based on testimony by Mr. Colin Lineberry of the Railroad Commission and a review of Drillinginfo records, which states that information required to be maintained does not contain any evidence or data of ownership of minerals or unclaimed mineral proceeds. A representative from Drillinginfo was invited to testify but declined to do so.

1:03 PM – During discussion of the section on Judge David Peeples draft order, Mr. Cisneros explained the circumstances during which Judge Peeples, after a discussion with the Comptroller’s office, requested that Ms. Fowler provide a disclaimer to her clients indicating that a declaratory judgment alone does not allow for the recovery of money from the Comptroller’s office at this time.

1:05 PM – Ms. Aston requested that “emphasis added” be included after bolded statements throughout the report. Mr. Bruun agreed and the change will be incorporated. Mr. Bruun noted his intent to change references of “ancient wrongs” to “acts of savagery” and “institutional negligence” as a result of Mr. Falcon’s testimony.

1:13 PM – Page 24 of the draft report references a 2003 court case, *King Ranch, Inc. v. Chapman*, which highlights the difficulty of trying to prove fraud or illegality after significant time has elapsed. Mr. Bruun noted that statutes of limitation must be considered. He requested recommendations that specifically deal with the challenge of distinguishing between descendants who have been wronged versus those whose ancestors sold their land and mineral interests.

1:16 PM – The draft report then discusses a memorandum submitted by Mr. Don Tomlinson regarding his analysis of unclaimed property data obtained through the Comptroller's office, in which he states the difficulty to match up descendants with the names of people who currently have a right or claim to unclaimed mineral proceeds. The analysis concludes that the Comptroller's office has failed to maintain proper records and information collected from the oil and gas industry is incomplete. The memorandum prompted several questions from the Commission, outline in the draft report, that are answered in the following section submitted by the Comptroller's office. Mr. Blanton proceeded to discuss the Comptroller's contribution to the draft report, which includes an overview of current statute governing reporting requirements and audits, the Getty litigation settlement from 1986 and subsequent statutory changes, and statistics on mineral proceeds currently held in unclaimed property. Approximately 0.14% of mineral proceeds records held by the Comptroller have no identifying information; roughly \$600,000. This contradicts Mr. Tomlinson's analysis primarily because the data set provided under the open records request does not contain social security numbers as that information is confidential by law.

1:27 PM – Mr. Bock suggested that the Commission make a statement to rebut the assertion made by Mr. Tomlinson that the Comptroller's office was not properly maintaining unclaimed mineral proceeds records. In light of the Comptroller's analysis, Mr. Tomlinson's conclusion is extreme. Mr. Cisneros explained how Mr. Tomlinson conducted the analysis, noting that the Comptroller's office has done a great job of providing proper statistical information.

1:32 PM – Mr. Bruun reiterated his interest in including check stub reporting requirements in reports to the Comptroller's office in an effort to match owners to unclaimed property more closely.

1:37 PM – Mr. Bruun noted that the Recommendations section of the draft report was intentionally left blank. He suggested that the Commission take time to review the draft report and submit any recommendations or edits to be discussed at the next hearing. Mr. Cisneros voiced his intention to reach out to Mr. Tomlinson and others to discuss current findings and prepare written comments for the Commission's consideration.

1:41 PM – Mr. Bruun scheduled the next two Commission meetings for Friday, October 24, 2014 and Friday, November 21, 2014, both at 10 o'clock am.

1:43 PM - Adjourn: Lance K. Bruun, Presiding Officer.

**Unclaimed Mineral Proceeds Commission**  
**October 24, 2014**  
**Robert E. Johnson Building Conference Center, Austin, Texas**

Pursuant to notice posted on October 16, 2014 in the Texas Register, the Commission convened to hear invited and public testimony.

The initial roll call was answered as follows: Bruun, Bock, Burton, Ramos, Bazan, Canales, Allison, Rangel, Cisneros, Barragan, Aston, and Blanton.

10:04 AM - Call to order, roll call, and adoption of the previous meeting's minutes. Mr. Blanton offered a correction to the previous meeting's minutes, which was accepted by the Commission. The minutes were adopted as amended.

10:07 AM – The Commission heard invited testimony from DeeDee King, a certified forensic genealogist, who discussed the laws of descent and distribution as well as the genealogists role in independently researching and verifying documentation for generational descent. She explained the importance of original source information and how derivative sources may be used to identify original sources. Ms. King also walked the Commission through a hypothetical scenario of heirship through wills and inheritances in accordance with applicable laws at the time of death.

10:36 AM – The Commission next heard testimony from Eileen McKenzie Fowler, who presented a resolution funding chart based on her review of Railroad Commission oil and gas production records for wells on original land grant lands in South Texas. The funding chart looked at potential fund amounts of \$2 billion, \$4 billion, \$6 billion, \$8 billion, and \$10 billion to be set aside for descendants who deserve compensation for monies that were confiscated by the state, by oil companies, and state agencies who have not complied with current laws. Ms. Fowler asserted that she had presented evidence of billions in unclaimed mineral proceeds while the Commission had completed no research nor uncovered any evidence to contradict her findings.

10:46 AM – In response to Ms. Fowler's testimony, Mr. Bruun read the following statement for the record:

You have represented to your clients and this Commission that:

- Minerals under Spanish and Mexican land grants, by virtue of the Treaty of Guadalupe Hidalgo and relinquishment in the 1866 Texas Constitution, are owned by the heirs or descendants 'forever.' That is not true, it is false;
- Texas' real property laws, including laws of limitations and adverse possession, do not apply to Spanish and Mexican land grants. That is not true, it is false;

In that connection, I do not believe you have not provided this Commission with a single case or legal authority to rebut or contradict any of the conclusions of the Burton, Ramos and Rangel memorandum.

- There are large areas of South Texas that are ‘untitled’ and ‘have no known owner.’ That is not true, it is false;
- There are over 15,000 oil and gas wells on Spanish and Mexican land grants where the owners are ‘unknown.’ That is not true, it is false; and,

You have cobbled together these false claims to persuade your clients that they are owners of unclaimed mineral proceeds simply by virtue of their status as descendants of Spanish and Mexican land grant grantees. That is not true, it is false.

Mr. Bruun noted that the Comptroller’s office has collected about \$559 million in unclaimed property attributable to mineral proceeds. Of that, \$226 million in claims have been paid to rightful owners, leaving \$333 million in remaining unclaimed property. This represents 3% of the \$10 billion appropriation requested by Ms. Fowler; an unreasonable request in light that the legislature would not even appropriate \$2 billion from the state’s Rainy Day Fund for critical water projects without a constitutional amendment approved by Texas voters. Mr. Bruun went on to explain that the Railroad Commission does not maintain ownership information and that “lease name” is not an indication or evidence of mineral ownership, rather it is simply an identification of the well. Ms. Fowler stated her disagreement.

10:51 AM – Ms. Fowler reiterated her assertion that well records that did not include information on lease names constituted unknown owners and proceeds from those wells rightfully belonged to the descendants of the original land grantee. Mr. Bruun stated that Ms. Fowler had not presented evidence to support such a claim.

11:00 AM – Mr. Cisneros then commented on the need for accuracy in the Commission’s final report concerning how much money would potentially be available in current unclaimed property funds for mineral proceeds. He stressed the need to refrain from injuring unknown owners who may also have legitimate claims on unclaimed property from mineral proceeds. Mr. Cisneros stated that it might be necessary to request additional information from the Railroad Commission on what is known and unknown, but cautioned Ms. Fowler that the information discovered may not align with her assumptions and calculations.

11:07 AM – Ms. Fowler responded to testimony provided by Robert Gonzalez at a previous hearing, stating that she was unable to complete legal work for the family because they did not sign a contract for her services. Mr. Bazan then asked how much money Ms. Fowler would have collected between all of her clients. Ms. Fowler stated that she has most likely received in the millions of dollars from her over 24,000 clients over the years.

11:10 AM – Mr. Blanton questioned some aspects of Ms. Fowler’s funding chart, including how the values were derived from Railroad Commission records that do not include any information regarding mineral proceeds. He noted that one underlying component for the chart, that a “u” appearing on well production records indicated an unclaimed well or unknown owners, is an unbacked assumption that needed to be explained. Ms. Fowler contended that it was not an assumption because there is no name associated with the records, no lease name or owner name, and since the wells are still producing there should be unclaimed mineral proceeds; there is over \$1 billion in unclaimed mineral proceeds held by Compass Bank in McAllen.

11:15 AM – Mr. Bock then proceeded to clarify the organizational layout of Ms. Fowler’s funding chart and any definitions that may be used by the Commission in making recommendations to the legislature regarding a possible claims procedure. Working off of testimony provided by Ms. King and the laws of distribution, Mr. Bock noted that not all descendants would necessarily be claimants. Ms. Fowler disagreed, stating that the declaratory judgments directly link her clients to the original land grantee and therefore all would be eligible claimants. Mr. Bock questioned whether Ms. Fowler had a recommendation to solve the problem she had defined. Ms. Fowler recommended \$10 billion be set aside for the descendants and requested that the Commission do the job for which it was established, identify the missing information in Railroad Commission records, and find the missing money derived from unclaimed wells in South Texas.

11:33 AM – Mr. Bruun, in looking at Ms. Fowler’s funding chart, asked for clarification on the column headings. Ms. Fowler explained that “Total Wells” refers to the total number of wells drilled in the defined area over time; “Total N/A Wells” refers to the number of wells not applicable for calculation purposes, including dry holes and canceled or abandoned wells, which were removed; “Total UMP Accts.” refers to well locations with no information in the “Lease Name” field. She explained that using the New Guide to Spanish and Mexican Land Grants in South Texas in conjunction with Railroad Commission production records obtained from the website, she was able to determine the total number of unclaimed wells. Mr. Bruun questioned her determination of missing lease name information, referring to the Railroad Commission’s application to drill which includes a field for that purpose as well as the various ways in which a lease name may be determined for those applications. Ms. Fowler claimed that she was not able to obtain the proper records from the Railroad Commission nor was she provided with an explanation for the missing information.

11:36 AM – Mr. Bruun questioned if the suggested distribution amounts under the “Potential Fund Amount” columns were directly related to the amount of production from the wells on each grant. She used a conservative example of 10 barrels of oil production per day to estimate the production from wells on each grant and therefore how much money from the fund would be attributable to each grant.

11:40 AM – Ms. Allison requested that the Chair reiterate the Commission’s charge, which is to study and determine the amount of unclaimed mineral proceeds on deposit with the Comptroller. She noted that Ms. Fowler’s request of \$10 billion was well beyond what was held by the Comptroller in unclaimed mineral proceeds. Mr. Bruun stated that the bill creating the Commission was entitled “an act relating to the creation of a commission to study unclaimed land grant mineral proceeds,” not “an act relating to the creation of a commission to study the appropriation and payment of reparations for descendants of original Spanish and Mexican land grant grantees.” Ms. Fowler countered that the Commission should be looking for the money that should be in the fund but is not since counties and oil companies failed to comply with the law and pocketed the money.

11:45 AM – The Commission next heard from Jonathan Steinberg, Assistant General Counsel, Comptroller of Public Accounts, regarding the motion from the September 12, 2014 hearing that directed the Comptroller to investigate the litigation brought by the Starr County in Cause Nos. 3059 and 3066. Mr. Steinberg presented the preliminary report, which outlined the investigation

and identified bank certificates held by Starr County in the amounts of \$161,009.56 for Cause No. 3059 and \$17,663.01 for Cause No. 3066; The Starr County District Clerk's office cannot identify the owners of the property. Each case was filed by the Roma Independent School District on April 2, 1956 for the collection of delinquent property taxes. Both cases identified hundreds of defendants and requested that the court partition the property so as to identify the correct owners of the land. In both cases the court established that ownership of the land could not be established by record title and that title would have to be established by possession. Nothing in the review of Cause No. 3066 indicated the source of the funds deposited with and currently held by Starr County. For Cause No. 3059, the court appears to have appointed a receiver for the purposes of determining a mineral lease however the receivership was later vacated; nothing in the documents establishes the source of funds currently held by Starr County. Mr. Steinberg indicated that a final report would be submitted at the next Commission hearing after a complete review of relevant documents.

12:00 PM – The Commission took a brief recess.

12:24 PM – The Commission reconvened to hear public testimony, which was limited to 5 minutes by unanimous consent of the Commission.

12:26 PM – The Commission heard from several individuals, including Adalgisa Alanis who presented patents given to her ancestors as original land grantees; they were granted four porcions and purchased another. Mr. Barragan noted that the New Guide lists some individuals who are original grantees and others who are descendants through the purchase of land. He questioned if this would lead to multiple lines of claimants for a single porcion.

12:53 PM – Yolanda Martinez and Elmer Sierra spoke about the La Barreta land grant in South Texas. They presented evidence that contradict state held records including incorrect names of land owners, incorrect chain of title, and incorrect survey boundaries; additionally, fraudulent documents had been submitted in various court cases that adversely affected the Balli family. Ms. Martinez stated that the courts are using Spanish law for convenience but will not allow the descendant families to use Spanish law to determine heirship. Mr. Bruun noted that because the case is being litigated, the issue is beyond the scope of the Commission.

1:07 PM – Former Congressman Albert Bustamante mentioned a recent settlement between Native Americans and the federal government over mineral interest ownership claims, which potentially granted billions of dollars to the claimant descendants. Several witnesses requested the establishment of a claims process that is transparent and equitable to the descendants of original land grantees who have suffered injustices and discrimination.

1:26 PM – Shawn Carlos De la Garza suggested that the Commission recommend repealing the three year holding period for unclaimed property and requiring the holder of the unclaimed property immediately turn the property over to the Comptroller. He also recommended creating a separate fund for unclaimed mineral proceeds funds, including a set-aside of 50% of that fund for the purposes of correcting the injustices done to descendants of Spanish and Mexican land grants.

1:33 PM – At the conclusion of public testimony, Mr. Bruun briefly described changes to the draft report, which included additions of testimony from and the incorporation of edits discussed

at the previous meeting. Mr. Bazan offered specific recommendation to the Commission that mirrored those of Mr. De la Garza, including: creating an account for unclaimed mineral proceeds separate from the general revenue fund; continuing to research the cases of past wrongs, either by this Commission or a legislative committee; and increasing Comptroller staff to provide accurate assistance to descendant families and potential claimants. Mr. Cisneros presented a copy of HB 2611, 82R, and accompanying documentation that attempted to outline the creation of a distribution system for unclaimed mineral proceeds.

1:41 PM – Mr. Bruun then addressed the question of how the Commission should proceed with the two lines of thought that had been presented, one being the literal charge of HB 724 and the Commission and the other being to provide compensation for dispossessions and injustices. In the later, the legislature would have to be persuaded to set aside money as reparations for a particular class of citizens; how is the determination made as to who would qualify to make a claim, in what proportion would those claims be paid, and where would the money come from.

1:45 PM – Mr. Bock stated that in order to provide recommendations, the Commission must establish clear definitions; for instance, there appears to be differing definitions of “unclaimed and abandoned” property as discussed during testimony. There also appears to be dissatisfaction with current procedures to claim unclaimed mineral interest property, which may also need to be addressed. Mr. Bock also suggested condensing the report to ensure that the recommendations would be read by legislators.

1:47 PM – Mr. Bruun noted that one of the reasons that descendants have not been able to claim money currently held with the Comptroller is because they do not own any of the \$333 million in unclaimed mineral proceeds; the Comptroller only authorizes claims to those who can establish ownership of the property. Mr. Cisneros stated that the Commission must correct an injustice by putting any unclaimed mineral proceeds derived from production on an original land grant into a separate fund to compensate those who have been injured. Mr. Bock stated that a separate fund established by the legislature may not always exist for the purpose for which it was intended and cautioned against specifying a dollar figure if the Commission were to recommend setting up a separate fund. Mr. Blanton confirmed the ability to establish a separate account for the purposes of tracking a particular type of money.

1:58 PM – Mr. Bruun suggested that Mr. Cisneros provide specific recommendations at the next meeting, paying particular focus on amounts of money, sources of them money, and who would have a right to claim those funds. The Commission as a whole could then decide whether those recommendations should be included in the final report. Mr. Blanton, in response to rumors that a fee was required to obtain certain Unclaimed Mineral Proceeds Commission documents, explained that the records are free to the public and requests may be made through the Comptroller’s Open Records Division.

2:02 PM –Mr. Bruun announced the next meeting for Friday, November 21, 2014, at 10 o’clock am in the Capitol Auditorium. A tentative date for a final meeting was set for Friday, December 19, 2014 at 10 o’clock am.

2:04 PM - Adjourn: Lance K. Bruun, Presiding Officer.



**Unclaimed Mineral Proceeds Commission**  
**November 21, 2014**  
**State Capitol Building, Capitol Auditorium, E1.004, Austin, Texas**

Pursuant to notice posted on November 14, 2014 in the Texas Register, the Commission convened to hear invited and public testimony.

The initial roll call was answered as follows: Bruun, Bock, Burton, Ramos, Bazan, Canales, Barragan, Aston, and Blanton.

10:00 AM - Call to order, roll call, and adoption of the previous meeting's minutes.

10:02 AM – The Commission heard invited testimony from Diane Farias, who presented on behalf of her father, George Farias. Ms. Farias stated that the failure of the Comptroller to successfully implement and enforce portions of the Property Code has resulted in an inability to identify unclaimed mineral proceeds that are derived from original land grants. She recommended establishing procedures to ensure that money from unclaimed wells with unknown owners is accounted for in a separate fund and utilized to pay claims. Ms. Farias also recommended requiring oil and gas companies to cite well specific information, including GPS tracking coordinates. The bill requires the Commission to determine the owners, notify the owners, and distribute the proceeds; Ms. Farias stated that the question was not about ownership because the Property Code already establishes the requirements for proof of ownership. Rather, the issue is that people with declaratory judgments are filing claims that have never been filed before by seeking claim to mineral proceeds from wells with unknown ownership and they are being treated differently under the law. Ms. Farias disagreed with the Commission's assessment that an individual must prove ownership of a mineral interest to make a claim. She suggested getting a legal opinion from the Attorney General on the process by which a group of descendants might file a claim on a group of unknown wells.

10:09 AM – Mr. Bock asked if Ms. Farias was able to provide a definition for unclaimed and presumed abandoned wells. Ms. Farias was unable to provide such a definition, but referred to testimony presented by Ms. Fowler at the previous hearing which purported to identify unclaimed wells on land grants in South Texas. Ms. Farias explained that if the original land grant grantee held a title that was never passed on, then the wells on that land grant would have no known owners and the proceeds would rightfully belong to the descendants of the original grantee. Ms. Blanton questioned how the Comptroller's office was failing to comply with the law. Ms. Farias stated that the Comptroller's audits of oil and gas companies did not include an audit of unclaimed wells. Mr. Blanton explained that oil and gas companies audited to ensure they are complying with unclaimed property laws and penalties are enforced for noncompliance. He stated that a recommendation could be made for additional audits or increased transparency for unclaimed mineral proceeds. Mr. Blanton also clarified that the Comptroller's website did not state that proof of heirship alone would suffice for payment of unclaimed property. He stressed the need for a link between ownership of a property being tracked by the Comptroller's office in addition to heirship documentation to show that an individual is linked to the property.

10:23 AM – The Commission next heard from Jonathan Steinberg, Assistant General Counsel, Comptroller of Public Accounts, regarding the motion from the September 12, 2014 hearing that

directed the Comptroller to investigate the litigation brought by the Starr County in Cause Nos. 3059 and 3066. This final report summarizes the available documents and tracks the available funds to the extent allowed for each case. Limited documentation from Cause No. 3066 did not indicate the source of the original deposit of approximately \$11,000. Cause No. 3059 included a copy of the court order and unexecuted mineral lease that the received was authorized to sign; the final closeout amount funds associated with this case was approximately \$54,000. After a thorough review, it was concluded that there is insufficient documentation to identify the rightful owners of the property held by Starr County. The Comptroller had received the unclaimed property checks amounting to approximately \$176,000.

10:28 AM – Moving into a discussion on the draft report and recommendations, Mr. Bruun read a prepared statement for the record. He stressed the contents of HB 724, *An Act relating to the creation of a commission to study unclaimed land grant mineral proceeds*, in which “land grant” is broadly defined to include any grant, not just Spanish and Mexican land grants, and mineral proceeds are specifically referred to as those “owned by a descendant.” This means that in the plain language of the bill, a descendant must own the mineral or royalty interests which generated the mineral proceeds to being with. Mr. Bruun emphasized a point made previously by Mr. Bock that definitions are important and stressed that “when the Legislature passes a bill that says one thing, it usually does not mean something entirely different.” The bill did not create a commission to study restitution or reparations for descendants of Spanish and Mexican land grant grantees, nor does the bill mention anything about past injustices or dispositions. Two lines of discussion have evolved: First, do the descendants own a present interest in mineral proceeds paid to the Comptroller per the plain language of HB 724? Second, even if present ownership cannot be proved, should the Commission recommend that the Legislature appropriate money to address past injustices and dispositions? Mr. Bruun continued:

“With respect to the first issue, it is apparent to me that the reason the descendants, through Ms. Fowler’s work, and in particular I was interested in Mr. Tomlinson’s memo, they have been unable to make a legitimate claim to the Comptroller and the reason is because they do not presently own a mineral or royalty interest that generated the mineral proceeds to being with. The reasons for this include the passage of time, the conveyance of the property by ancestors, the intervention of limitations, and the fact that a significant part of the mineral proceeds may not be from Spanish or Mexican land grants in the first place.

We also have to honestly address, I believe, some of the false claims that have been made to argue for ownership, and I refer to the claims made by Eileen Fowler.”

Mr. Bruun then reiterated the false statements and assumptions made by Ms. Fowler throughout her testimony to the Commission, which were read for the record at the previous hearing. He stressed the fact that instead of presenting the Commission with reliable data and information and relevant legal authorities to persuade the Commission that she is correct, Ms. Fowler played to the audience, mocked the Commission, and challenged Commission members to prove that she was wrong. Mr. Bruun then discussed the second question of whether the Commission should recommend that the Legislature appropriate money to address past injustices of dispositions. He pointed to several legal cases in which claimants attempted to seek compensation for acts committed against their ancestors by the ancestors of others; those cases

have always resulted in the claimants' loss. The draft report references the *King Ranch v. Chapman* case to highlight this point:

“In this case, the Chapman heirs have cobbled together a series of interesting historical tidbits and Texas folklore in an effort to regain title to one-half of the Rincon – an interest they claim is worth a substantial sum. Viewed separately, each of these tidbits fails to provide evidence of King's extrinsic fraud, and aggregated, they fare no better.”

Mr. Bruun noted that the descendants, in seeking restitution for past injustices through a Legislative appropriation, would be requiring a majority of Texas citizens, who have no connection to the lands of South Texas, to provide funding for that restitution. Testimony has suggested that a righteous government would pay restitution, implying that a government that did not would be unrighteous; however, a righteous government's duty is to provide services and resources to the current and future generations of all citizens. A righteous government would not take revenue from the whole to pay a few for ancient grievances that can neither be asserted nor proven in any legal forum.

10:41 AM – Mr. Bazan asked for a clarification on the procedures for adopting recommendations for the final report. Mr. Bruun suggested a motion be made and seconded to include a recommendation, which could then be discussed and voted on by the full Commission. He noted that under the Commission's rules, any recommendation that is not included in the formal report may be included in the report as a minority recommendation. Mr. Bazan expressed interest in continued study of the issue of past injustices and recommended additional resources for the Comptroller's office in South Texas to improve bilingual communications and assist descendants in understanding the claims process. Mr. Canales recommended receiving additional information from oil and gas companies on well locations to allow the Comptroller to compile a list of proceeds derived from original Spanish and Mexican land grants. This would also settle the question of the amount of unclaimed mineral proceeds from this area, which has been estimated at anywhere between \$700,000 up to Ms. Fowler's estimate of \$10 billion. Mr. Canales also addressed how unclaimed mineral proceeds might be accounted for separately within the general fund. He explained that removing the funds to a separate account outside of the general revenue fund would have a negative fiscal impact and might prevent the Legislature from creating the account. Mr. Blanton confirmed that the Comptroller's office could set up a separate accounting for unclaimed mineral proceeds within the general fund without Legislative action or a constitutional amendment.

10:47 AM – Mr. Bruun expressed support for a recommendation that would require oil companies, by rule or by statute, to include check stub reporting information from the Natural Resources Code in unclaimed property reports to the Comptroller. Additionally, he noted that any application submitted to the Railroad Commission required detailing the original land grant on which the well is drilled. Mr. Bruun suggested that this information might also be requested from oil and gas companies when reporting unclaimed property. Mr. Bazan asked if there was any precedent for creating an account within the general fund that would not be subject to appropriations. Mr. Blanton explained that some dedicated accounts have been legislatively created, but there is currently some discussion on how those dedicated accounts are used; a constitutionally dedicated account would not be subject to appropriations but would require voter approval for its creation. Mr. Canales stated that if check stub reporting information was turned

over to the Comptroller it would be sufficient to account for unclaimed mineral proceeds funds separately even though they would still be within the general fund.

11:03 AM – Mr. Bock began a discussion of his recommendation for an administrative hearing system that would specifically deal with unclaimed mineral proceeds claims. He stressed that the bill creating the Commission was limited in scope and therefore did not allow for the resolution of all of the issues that have been presented by the public, such as claims against mineral proceeds that have not been delivered to the Comptroller. He recommended a method by which an administrative body with all-encompassing powers to resolve legal and evidentiary problems in a clear and concise manner. The administrative court would decide the existence of mineral proceeds that belongs to a descendant of an original land grant that is unclaimed and presumed abandoned.

11:13 AM – Mr. Blanton briefly explained the Comptroller's current appeals processes for unclaimed property claims, which allows unsatisfied claimants the right to sue the state in district court. Mr. Bruun noted that courts of general jurisdiction are already able to decide questions of ownership. Mr. Ramos expressed concern about possible conflicting rulings between those from an administrative court and adjudicated trespass to try title actions in district court. Mr. Bruun explained that a trespass to try title involves a dispute over who owns a property and that if claim cannot be made because of limitations or record title has been passed out of the family then it is impossible to make a claim to mineral proceeds that might be generated from an unclaimed mineral interest. Mr. Bock stated that an administrative body could have broad powers, to which Mr. Bazan noted that it would be a one-stop-shop that specializes in claims against unclaimed mineral interest proceeds. Mr. Canales pointed out that an independent entity would provide for more transparency.

11:21 AM – Mr. Bruun again stressed the importance of proving ownership of the mineral royalty or interest that generated the proceeds held by the Comptroller. In a vast majority of cases an individual might own only part of the interest or proceeds in any particular well; these interests were most likely carved out back in the chain of title and a claimant would have to go back to that person's ownership and prove an heirship connection to that individual in order to claim the royalty interest and subsequent proceeds. Mr. Ramos pointed out that declaratory judgments, declarations of heirship, and trespass to try title actions all allow for anyone whose interests have been affected to join in that lawsuit, an administrative court might not allow the same protections for those interested parties. Mr. Bock agreed on the importance of involving all interested parties, something that could be included in an administrative court's authority. Mr. Canales noted that the idea would be cost effective and might eliminate the need for attorneys to be involved in every case.

11:29 AM – A second submission from Mr. Bock, an executive summary to appear at the beginning of the final report to the Legislature, was then discussed. The shortened summary, which highlights necessary points of interest, the Commission's conclusions, and the recommendations yet to be adopted, would provide lawmakers with a succinct overview of the Commission's work. Mr. Bruun requested a motion that the proposed executive summary be amended to the beginning of the draft report. Mr. Bazan made such a motion, Mr. Canales seconded the motion, and it was adopted without further discussion.

11:31 AM – Mr. Bruun next discussed edits to the draft report stemming from comments from members of the Commission and additional invited and public testimony. Mr. Bruun moved that the edits be incorporated into the draft report. The motion was seconded by Mr. Bock and was adopted without further discussion.

11:33 AM – Regarding recommendations that had already been submitted and discussed by the Commission, members of the Commission requested additional time to draft precise language to be incorporated into the final report to the Legislature. Mr. Bruun requested that drafted recommendation be submitted for consideration and possible adoption at the following meeting. He emphasized that any recommendation submitted that is not adopted by a majority of the Commission may be included as a minority recommendation within the final report. Mr. Bruun requested that specific draft recommendations be distributed to all members prior to the next meeting.

11:37 AM – Mr. Blanton distributed contact information for the Comptroller's Open Records Division, which provides Commission information and documentation upon request, and made available to those present several copies of the audio recording from the October 24, 2014 Commission hearing. The Commission took a short recess.

12:00 PM – The Commission reconvened to hear public testimony.

12:16 PM – Evangeline Balli recommended that the Commission support a recommendation from Mr. Cisneros that would repeal the retention period for holders of unclaimed mineral proceeds. David Longoria recommended that a separate fund be set up for Spanish land grant heirs with a beginning balance of \$5 billion to cover the damage that was done through the loss of land.

12:34 PM – Nicholas Balli requested that royalties be paid to the descendants of original grantees. He suggested collecting money from oil companies and conducting full audits on all counties in which an original land grant is located. Several people testified for the need to separately account for unclaimed mineral proceeds and that those proceeds rightfully belong to the descendants.

12:42 PM – Yolanda Martinez insisted that land grants are not governed by Texas law, but rather are governed by Spanish and Mexican laws. Under these laws, the descendants of original land grant grantees would still own the land and could not be subject to Texas laws like adverse possession or foreclosure for unpaid property taxes.

12:46 PM – Allie Shapiro then testified that she had recently encountered a member of the King family who own a substantial portion of what was original land grant acreage now known as the King Ranch. She stated that the individual had shown her pictures of several prominent politicians, including the Speaker of the Texas House of Representatives, and insinuated that the Commission's work had already been decided. Ms. Shapiro then asked the Commission to recommend that the purpose and scope be extended so the issues could be resolved. She suggested creating a database of family genealogies to assist families in connecting their ancestors to mineral interests. She asked the Commission, a body that in her opinion should

represent the descendants, to find a legislator to sponsor a bill on their behalf to accomplish their overall goals.

1:11 PM – Diane Farias, who testified earlier in the day, spoke again about the need to fully implement the unclaimed property laws. She reiterated her belief that the laws were being ignored and asked the Commission to use the power of their recommendations to address the illegalities and the pattern of victimization that has developed within the descendant families.

1:15 PM –Mr. Bruun announced the next meeting for Friday, December 19, 2014, at 10 o'clock am in the Capitol Auditorium.

1:17 PM - Adjourn: Lance K. Bruun, Presiding Officer.

## **EXHIBIT 2: List of Individuals Providing Oral Testimony**

The following is a list of individuals who presented oral testimony at the Commission hearings. Although not listed here, written testimony submitted at and between Commission hearings was made a part of the Commission's official record.

### **January 31, 2014**

#### **Invited Testimony**

Chris Conradt	Comptroller of Public Accounts	Open Government Requirements
Frances Torres	Comptroller of Public Accounts	Unclaimed Property Division Overview
Rebecca Donachie	Admin. Director, Rep. Ryan	
Jose Barragan	Guillen	General comments on HB 724
	General Land Office	Overview of Land Grants

### **February 28, 2014**

#### **Invited Testimony**

Rep. Ryan Guillen	State House of Representatives	Legislative Intent of HB 724
Eileen McKenzie Fowler	Attorney	

#### **Public Testimony**

Diana Balli		McAllen, Texas
Federico B. Balli	Balli Family Organization	Edinburg, Texas
Nicolas Balli	Tejano Land Grant Society	San Benito, Texas
Conrad M. Gonzales, Jr.	De la Garza Family	San Antonio, Texas
Conrad A. Gonzales, Sr.	De la Garza Family	San Antonio, Texas
Yolanda Martinez		Donna, Texas
Lori Garza-Gongora		San Antonio, Texas
Ramin C. Gonzalez	Pina/Balli Families	Weslaco, Texas
Adalgisa Alanis		San Juan, Texas
David Alejandro Ruiz		Austin, Texas
Mario Balerio Gonzalez		Abilene, Texas
Robert Gonzalez		San Antonio, Texas
Elme C. Sierra		Brownsville, Texas
Federico Joel Garza Pina		Spring, Texas

### **April 25, 2014**

#### **Invited Testimony**

Phillip Ashley	Comptroller of Public Accounts	Unclaimed Property Funds
Frances Torres	Comptroller of Public Accounts	Holder Reporting and Tracking
Bryant Clayton	Comptroller of Public Accounts	Holder Reporting and Tracking
Colin Lineberry	Railroad Commission of Texas	Jurisdictional Authority
		Historical Injustices against Tejano
John Falcon		Landowners
George Farias		White Paper Submission

## June 27, 2014

### Invited Testimony

Tricia Davis	Texas Royalty Council	Mineral Interest Payment to Owners
Eileen McKenzie Fowler	Attorney	
Robert Gonzalez		

### Public Testimony

Reynaldo Balli	The Abelardo Balli Munoz Family	San Antonio, Texas
David Ruiz		Austin, Texas
Adalgisa Alanis		San Juan, Texas
Nicolas Balli	Tejano Land Grant Society	San Benito, Texas
Yolanda Martinez	Balli Family Organization	San Benito, Texas
Diane Farias		San Antonio, Texas
Gloria Balazan		San Antonio, Texas
Patricia Champion	Champion & Champion	San Antonio, Texas
Cynthia Requenez		Palmview, Texas
Alia D. Garcia-Ureste		El Paso, Texas
Gregoria Herrera La Grave		Pine Bluff, Arizona

## September 12, 2014

### Invited Testimony

James LaBas	Texas Oil & Gas Association	Check Stub Reporting
Wiley McIlwain		Rebuttal to Robert Gonzalz Testimony
		Historical Injustices against Tejano
John Falcon		Landowners

## October 24, 2014

### Invited Testimony

DeeDee King	Forensic Genealogist	Genealogical Descendancy and Distribution
Eileen McKenzie Fowler	Attorney	Recommendation for \$10 Billion Appropriation
Jonathan Steinberg	Comptroller of Public Accounts	Report on Starr County Motion

### Public Testimony

Adalgisa Alanis		San Juan, Texas
Evangelina Balli		Fresno, California
Leticia Perez-Garzoria		Brownsville, Texas
Yolanda Martinez		Donna, Texas
Elmer Sierra		Brownsville, Texas
Albert G. Bustamante		San Antonio, Texas
David Ruiz		Austin, Texas
Gloria Munoz Gibney		Corpus Christi, Texas



Shawn Carlos De la Garza

Nassau Bay, Texas

**November 21, 2014**

**Invited Testimony**

George Farias

White Paper and Supplements

Jonathan Steinberg

Comptroller of Public Accounts

Final Report on Starr County Motion

**Public Testimony**

Arnolfo Sierra

Pharr, Texas

Eugenio Mendeza, Jr.

Pharr, Texas

Adalgisa Alanis

San Juan, Texas

Evangelina Balli

Fresno, California

David Longoria

Corpus Christi, Texas

Nicolas Balli

San Benito, Texas

Azalia C. Reyes

San Antonio, Texas

Yolanda Martinez

Donna, Texas

Allie Shapiro

San Antonio, Texas

**December 19, 2014**

**Testimony<sup>96</sup>**

John Falcon

Historical Injustices against Tejano  
Landowners

Jose Sierra, Jr.

Eileen McKenzie Fowler      Attorney

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<sup>96</sup> The agenda for the December 19, 2014 hearing did not list invited or public testimony. Testimony presented at this hearing was allowed by the Commission without objection.

### **EXHIBIT 3: Unclaimed Mineral Proceeds Commission Rules**

The following rules were adopted by the Commission at the September 12, 2014 hearing:

#### **Rules and Procedures for Adopting a Report of the Unclaimed Mineral Proceeds Commission**

##### **I. General Definitions**

- a) For the purposes of this document, the following terms are assigned their corresponding meaning:
  - 1. Commission – the Unclaimed Mineral Proceeds Commission, created through House Bill 724 of the 83<sup>rd</sup> Texas Legislature
  - 2. Report – The findings and conclusions reached by the Commission on the topics the Commission has been charged to study and that are to be included in the Commission’s written summary to the Legislature.

##### **II. Proposing of a Report by a Commission Member**

- a) The presiding officer of the Commission may, with the consent of the majority of the Commission members, appoint a subcommittee of the Commission to prepare a draft Report. Upon completion of the draft Report, the subcommittee shall submit it to the Commission, and it will be considered by the Commission without the need for a motion and a second, except upon final adoption as set forth below. Once submitted, any member of the Commission may offer amendments to the draft Report if seconded by another member.
- b) Any Report shall be considered offered and in order for the purposes of Commission consideration if one Commission member offers the Report and that Report is seconded by another member. If a Commission member’s Report fails to receive a second from another Commission member, then at that time the Report will not be in order for Commission consideration, but it does not prevent any Commission members from offering the exact same or similar Report at a future time.
- c) Only duly appointed members of the Commission shall have the authority and privilege to offer Reports or amendments for Commission consideration. Any private citizen of the public wishing to have a specific Report or amendment considered by the Commission must have their Report or amendment offered by a Commission member.

##### **III. Consideration of a Proposed Report Before the Commission**

- a) Once Reports and or amendments have satisfied the provisions set forth in II, they shall be viewed as in order and then before the entire Commission for consideration. While under consideration, all Commission members are invited to

speaking freely in an open dialogue format on the topic of and the merits of a specific Report.

- b) During the consideration process, which is not limited to just one formal meeting of the Commission, consideration of a Report may be either tabled or revisited by a majority vote of the Commission members present at that time.
- c) In order to be fully considered by the Commission, a Report shall not be adopted during the same meeting originally proposed pursuant to section II. Before a Report can be adopted by the Commission, it must first be considered in a manner in which every Commission member is given the opportunity to effectively express their opinion on the matter, so the public may be afforded an adequate opportunity to comment on the Report, and also remain as pending business for a minimum time period of at least 48 hours from when it first satisfied section II.
- d) The forty eight hour rule set forth in section III(c) may be suspended on a unanimous vote of the Commission members in attendance and voting on the matter.

#### IV. Formally Adopting a Proposed Report by the Commission

- a) Once a Report has satisfied section III(c) or III(d), it is eligible to be adopted as the formal Report that the Commission is required to submit to the Legislature.
- b) To be formally adopted the Commission's Report the following procedure applies:
  - 1. A motion to formally adopt the Report must be made by a Commission member and seconded by another Commission member.
  - 2. After a motion for adoption has been made and seconded, any member of the Commission may speak on the proposed Report. After all Commission members have had the opportunity to speak on the Report, the Commission's presiding officer shall call for a record vote on the Report. In the event that there are not at least 7 Commission members in attendance to vote on the Report, then the Commission's presiding officer shall postpone the record vote until a time that 7 or more Commission members are in attendance.
  - 3. When voting on a motion to formally adopt a Report, Commission members can vote either for, against, or present and not voting. Members of the Commission who are employed by the State may, but are not required to, participate in the vote.
- c) After the votes on an eligible Report have been verbally cast, the Commission's presiding officer shall tally the vote total and if more members vote for the motion than against (and not counting those present and not voting), then the presiding officer shall announce the motion passed and direct the Commission's clerk to include the Report in the Commission's report to the Legislature. If more members vote against the motion than for or if these totals are identical (and not counting those present and not voting), then the presiding officer shall announce the motion failed.

- d) Any motion that has been deemed passed or failed may be reconsidered by the Commission at any time. To reconsider the vote on a previous motion, one member must request the reconsideration and have that reconsideration seconded by another member. After reconsideration has been offered and seconded, the Commission members shall follow the provisions set forth in IV(b) in again voting on the motion at hand.
- e) For the purposes of section IV(a-d), a Commission member is considered in attendance and able to vote on a motion if the Commission member is physically present at the applicable Commission meeting. Members participating in a Commission meeting through teleconference are not allowed to vote on any motions.

#### V. Formal Commission Report and Additional Information to be Included in the Commission Report

- a) Once a Report has been successfully proposed, considered, and adopted through the appropriate process, the clerk of the Commission shall include with the Report the following information:
  - 1. The record vote, including the names of the Commission members and how they voted, on the motion to formally adopt the Report, and
  - 2. All relevant data, background information and appendices that support the Commission's decision to formally adopt the Report.
- b) Any Commission member(s) who voted in the minority with respect to the Report may include with the Commission's report a minority statement. A minority statement under this subsection shall include: the Commission member(s) name, a brief explanation of why they voted for or against the Report, and any factual data they believe supports their position on the Report.
- c) No Commission vote is necessary to adopt a minority statement. Any Commission member(s) who voted in the minority on a Report (excluding members who elect to vote "present and not voting") who wish to have a minority statement included in the Commission's report shall be allowed the opportunity to convey that opinion within the guidelines set forth in section V(b).

#### VI. The Commission Report to the Legislature

- a) In addition to the formal Report and other information for the Commission's report set forth in section V and as otherwise required by House Bill 724, the following information shall also be made available in the report:
  - 1. Brief biographical data on each Commission member that speaks to their relevant experience/expertise,
  - 2. A summary of the manner in which the Commission undertook their studies, to include a list of all Commission meetings and individuals/entities that the Commission received testimony from,
  - 3. Copies of all meeting agendas and minutes, and

4. A signature sheet for Commission members to sign expressing their consent that the Commission report was constructed with their input and in a manner that does not violate the procedures and rules set forth in this document. A Commission member's decision to sign the Commission's report does not necessarily convey their support for the report's findings, rather it expressly conveys their support for the process in which the report was written.
- b) The Commission's report may also include such discussion and information as may be approved by the majority of the Commission voting on the Report.

### EXHIBIT 4: Example of Holder Report to Comptroller

00012012P0122911PA19710804		PHILADELPHIA		51	PA	1735 MARKET STREET		11TH FLOOR		PHILADELPHIA
2000001P	BYRD	EVELYN	Y			P O BOX 2283		KILGORE		TX756632283
2000002P	ELDER	ALMORA	K			C/O CAROLYN HILL GUARDIAN	P O BOX 1852	LONGVIEW		TX75606
2000003P	GILBERT	RONALD	T	SR		P O BOX 965		PUDUCAH		TX79248
2000004P	VOELKEL	JOHN	A			P O BOX 8356		MIDLAND		TX79708
2000005P	BURNSIDE	ROBERT	E			C/O ANNE A BURNSIDE IND EXEC	CO GAINESVILLE NATL BANK	PO DRAWER D	GAINESVILLE	TX76240
2000006P	BURTON	LONNIE				RT 6 BOX 144		HENDERSON		TX766529202
2000007P	BURTON	LONNIE				RT 6 BOX 144		HENDERSON		TX766529202
2000008P	DEGEURIN	DONALD	C			1604 CHOWAN PL		ROUND ROCK		TX78681
2000009P	DEGEURIN	RALPH	A			BOX 555		OVERTON		TX756840555
2000010P	DEGEURIN	RALPH	A	JR		RT 2 BOX 4A		OVERTON		TX75684
2000011P	CGARLAND COODY					C/O VICKIE J RIST EXECUTRIX	PO BOX 8312	TYLER		TX75711
2000012P	LACKEY	WILLIAM	D	JR		PO BOX 849		ASPERMONT		TX79502
2000013P	CMEIRIDIAN OIL PRODUCTION INC					C/O MERIDIAN OIL INC	P O BOX 840656	DALLAS		TX752840656
2000014P	MILLER	ADOLPHUS	B			420 TOWNE OAK DR		TYLER		TX75701
2000015P	MONIGOLD	KAREN	G			5627 WILLIS AVE		DALLAS		TX752064440
2000016P	MULLIKIN	ESTELLE	R			P O BOX 1293		WARSALL		TX756711293
2000017P	MULLIKIN	ESTELLE	R			P O BOX 1293		MARSHALL		TX756711293
2000018P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000019P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000020P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000021P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000022P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000023P	RIDDEL	ALLENE	W			PO BOX 874		ASPERMONT		TX79502
2000024P	RACHERS	TYLER	B			9133 BOLDMEYER CIRCLE		DALLAS		TX752520212
2000025P	SCHULZ	PAUL	J			7677 DALLAS ST		CORPUS CHRISTI		TX78413
2000026P	SCHULZ	PAUL	J			7677 DALLAS ST		CORPUS CHRISTI		TX78413
2000027P	SCHULZ	PAUL	J			7677 DALLAS ST		CORPUS CHRISTI		TX78413
2000028P	SCHULZ	PAUL	J			7677 DALLAS ST		CORPUS CHRISTI		TX78413
2000029P	SCHULZ	PAUL	J			7677 DALLAS ST		CORPUS CHRISTI		TX78413
2000030P	SHUPE	VIOLA	L			RR 1 BOX 222		SUDAN		TX793719648
2000031P	SMITH	ARETTA	L			10394 FM 553		EDGEWOOD		TX75117
2000032P	SMITH	SAMUEL	P			1601 CHERRY AVENUE		WICHITA FALLS		TX763092166
2000033P	SNARE	MINNIE	E			5620 WINIFRED DR		FORT WORTH		TX761332502
2000034P	SNARE	MINNIE	E			5620 WINIFRED DR		FORT WORTH		TX761332502
2000035P	THOMAS	LORENDA	M			RR 1 BOX 234		DIANA		TX75640
2000036P	CTRUST CO OF TEXAS					C/O MARIAN M MONTGOMERY AGENT 12050 TAVEL CIR		DALLAS		TX752302234
2000037P	TYRA	C	L			PO BOX 11042		MIDLAND		TX797028042
2000038P	VAUGHAN	CHARLES	M			120 REDONDO DR		GUN BARREL CITY		TX75147
2000039P	HOOPER	VESTA B		EST		C/O LINDA C HOOPER	ANN H STA5912 E UNIVERSITY 105	DALLAS		TX752064669
2000040P	WEAVER	KATHLEEN				1611 S WALL ST		TYLER		TX75701
2000041P	WINGO	LINDA	N			3522 BANGOR CT E		SAVING		TX750627431
2000042P	AZAR	RICHARD	J	III		214 ALTA AVE		SAN ANTONIO		TX78209
2000043P	CANNAN	PRISCILLA	J			C/O DORIS CANNAN EWING POA	9311 DIAMANTE DR	MAGNOLIA		TX77354
2000044P	CANNAN	PRISCILLA	J			C/O DORIS CANNAN EWING POA	9311 DIAMANTE DR	MAGNOLIA		TX77354
2000045P	CANNAN	PRISCILLA	J			C/O DORIS CANNAN EWING POA	9311 DIAMANTE DR	MAGNOLIA		TX77354
2000046P	CEXPANDING ENERGY CORP					4000 N BIG SPRING STE 200		MIDLAND		TX797054613
2000047P	CEXPANDING ENERGY CORP					4000 N BIG SPRING STE 200		MIDLAND		TX797054613
2000048P	CEXPANDING ENERGY CORP					4000 N BIG SPRING STE 200		MIDLAND		TX797054613
2000049P	CEXPANDING ENERGY CORP					4000 N BIG SPRING STE 200		MIDLAND		TX797054613
2000050P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000051P	COIL GAS OTHER MINERALS					PO BOX 7018		TYLER		TX757117018
2000052P	CPACIFIC ENTERPRISES OIL CO USA					14860 MONIFORT DRIVE STE 209		DALLAS		TX75254
500005400005200000496357000										

Exhibit 4: In testimony before the Commission on April 25, 2014 representatives from the Comptroller’s office presented an example of the reports received from holders of unclaimed property. Reports are in the standard NAUPA 2 layout and are fixed-width text files in ASCII format. Color coding has been added to selected lines to show the length of specific fields for each type of record: the report header record, an example property record, and the report summary record. Some data has been redacted with black boxes. Due to the width of such files, the example above does not show the entire report. While not visible in the screenshot, each property record also includes the property type, property value, and other data. For a detailed description of the NAUPA 2 format and included data fields, please see Comptroller publication 96-656, “Unclaimed Property Electronic Reporting Specifications.”

PROP_PROP ->	PROP_PROP -	PROP_NM_F -	PROP_NM_LAST -	PROP_TITLE -	PROP_STR1 -	PROP_STR2 -	PROP_STR3 -	PROP_CITY -	PROP_STATE -	PROP_ZIP1 -	PROP_ZIP2 -	PROP_CNTR -	PROP_BRTH -	SSN
CK	13	EVELYN Y	BYRD		P O BOX 2283			KILGORE	TX	75663	2283			[SSN REDAC]
CK	13	ALMORA K	ELDER		C/O CAROLYN HILL GUARDIAN	P O BOX 1852		LONGVIEW	TX	75606	0000			0
CK	13	RONALD T	GILBERT SR		P O BOX 965			PADUCAH	TX	79248	0000			0
CK	13	JOHN A	VOELKEL		P O BOX 8356			MIDLAND	TX	79708	0000			0
MI	02	ROBERT E	BURNSIDE		C/O ANNE A BURNSIDE IND EXEC	CO GAINESVILLE NATL BANK	PO DRAWER D	GAINESVILLE	TX	76240	0000			[SSN REDAC]
MI	02	LONNIE	BURTON		RT 6 BOX 144			HENDERSON	TX	75652	9202			[SSN REDAC]
MI	02	LONNIE	BURTON		RT 6 BOX 144			HENDERSON	TX	75652	9202			[SSN REDAC]
MI	02	DONALD C	DEGEURIN		1604 CHOWAN PL			ROUND ROCK	TX	78681	0000			[SSN REDAC]
MI	02	RALPH A	DEGEURIN		BOX 555			OVERTON	TX	75684	0555			[SSN REDAC]
MI	02	RALPH A	DEGEURIN JR		RT 2 BOX 4A			OVERTON	TX	75684	0000			[SSN REDAC]
MI	02		GARLAND COODY		C/O VICKIE J RIST EXECUTRIX	PO BOX 8312		TYLER	TX	75711	0000			[SSN REDAC]
MI	02	WILLIAM D	LACKEY JR		PO BOX 849			ASPERMONT	TX	79502	0000			[SSN REDAC]
MI	02		MERIDIAN OIL PRODUCTION INC		C/O MERIDIAN OIL INC	P O BOX 840656		DALLAS	TX	75284	0656			[SSN REDAC]
MI	02	ADOLPHUS B	MILLER		420 TOWNE OAK DR			TYLER	TX	75701	0000			[SSN REDAC]
MI	02	KAREN G	MONIGOLD		5627 WILLIS AVE			DALLAS	TX	75206	6440			[SSN REDAC]
MI	02	ESTELLE R	MULLIKIN		P O BOX 1293			MARSHALL	TX	75671	1293			[SSN REDAC]
MI	02	ESTELLE R	MULLIKIN		P O BOX 1293			MARSHALL	TX	75671	1293			[SSN REDAC]
MI	02		OIL GAS OTHER MINERALS		PO BOX 7018			TYLER	TX	75711	7018			[SSN REDAC]
MI	02		OIL GAS OTHER MINERALS		PO BOX 7018			TYLER	TX	75711	7018			[SSN REDAC]
MI	02		OIL GAS OTHER MINERALS		PO BOX 7018			TYLER	TX	75711	7018			[SSN REDAC]
MI	02		OIL GAS OTHER MINERALS		PO BOX 7018			TYLER	TX	75711	7018			[SSN REDAC]
MI	02	ALLENE W	RIDDEL		PO BOX 874			ASPERMONT	TX	79502	0000			[SSN REDAC]
MI	02	TYLER B	ROGERS		9133 BOEDEKER CIRCLE			DALLAS	TX	75225	2012			[SSN REDAC]
MI	02	PAUL J	SCHULZ		7677 DALLAS ST			CORPUS CHRIS	TX	78413	0000			[SSN REDAC]
MI	02	PAUL J	SCHULZ		7677 DALLAS ST			CORPUS CHRIS	TX	78413	0000			[SSN REDAC]
MI	02	PAUL J	SCHULZ		7677 DALLAS ST			CORPUS CHRIS	TX	78413	0000			[SSN REDAC]
MI	02	PAUL J	SCHULZ		7677 DALLAS ST			CORPUS CHRIS	TX	78413	0000			[SSN REDAC]
MI	02	PAUL J	SCHULZ		7677 DALLAS ST			CORPUS CHRIS	TX	78413	0000			[SSN REDAC]
MI	02	VIOLA L	SHUPE		RR 1 BOX 222			SUDAN	TX	79371	9648			[SSN REDAC]
MI	02	ARRETTA L	SMITH		10394 FM 859			EDGEWOOD	TX	75117	0000			[SSN REDAC]
MI	02	SAMUEL P	SMITH		1601 CHERRY AVENUE			WICHITA FALLS	TX	76309	2166			[SSN REDAC]
MI	02	MINNIE E	SNEAD		5620 WINNIFRED DR			FORT WORTH	TX	76133	2502			[SSN REDAC]
MI	02	MINNIE E	SNEAD		5620 WINNIFRED DR			FORT WORTH	TX	76133	2502			[SSN REDAC]
MI	02	LORENDA M	THOMAS		RR 1 BOX 234			DIANA	TX	75640	0000			[SSN REDAC]
MI	02		TRUST CO OF TEXAS		C/O MARIAN M MONTGOMERY AGENT	12050 TAVEL CIR		DALLAS	TX	75230	2234			[SSN REDAC]
MI	02	C L	TYRA		PO BOX 11042			MIDLAND	TX	79702	8042			[SSN REDAC]
MI	02	CHARLES M	VAUGHAN		120 REDONDO DR			GUN BARREL CI	TX	75147	0000			[SSN REDAC]
MI	02	VESTA B	HOOPER	EST	C/O LINDA C HOOPER ANN H STA	5912 E UNIVERSITY 105		DALLAS	TX	75206	4669			[SSN REDAC]
MI	02	KATHLEEN	WEAVER		1611 S WALL ST			TYLER	TX	75701	0000			[SSN REDAC]
MI	02	LINDA I	WINGO		3572 RANDOLPH CT E			IRVING	TX	75062	7431			[SSN REDAC]

Exhibit 4: The figure above is a screenshot of the report from the previous page as it is currently stored in the Comptroller's unclaimed property database. The fields are in a slightly different order than the prior exhibit. Due to the width of these records, the screenshot does not represent a complete view of any single property record; in addition to other data, the property value field, owner birthdate field, and claim status field are not visible. The unclaimed property database stores all of the data submitted as electronic reports and other internal use data. Internal-use fields include property claim status, publication history, and the date the property loaded to the Comptroller's database. A live view of the unclaimed property database was shown at the Commission's April 25, 2014 hearing.

## EXHIBIT 5: Getty Agreement

REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES

*entered*  
*1/9/86*  
*Jmt*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

GETTY OIL COMPANY, a Delaware	§	
corporation, et al.	§	
Plaintiffs	§	
vs.	§	No. C-85-335
ANN W. RICHARDS, State Treasurer	§	
of the State of Texas, and	§	
JIM MATTOX, Attorney General	§	
of the State of Texas,	§	
Defendants	§	

### COMPROMISE SETTLEMENT AGREEMENT

This agreement is by and between Getty Oil Company, Mitchell Energy Corporation, Apache Corporation, Atlantic Richfield Co., Conoco Inc., Champlin Petroleum Company, Fina Oil and Chemical Co., Texaco Inc., Grace Petroleum Corporation, Mobil Oil Corporation, Pride Pipeline Company, Pride Pipeline Limited Partnership, The Coastal Corporation, Amoco Production Company, Scurlock Oil Company, Ashland Oil, Inc., TXO Production Corp., Union Oil Company, Tesoro Petroleum Corporation, The Permian Corporation, Texas Oil & Gas Corporation, Phillips Petroleum Co., Texas International Petroleum Corp., Phoenix Resources Co., JM Petroleum Corp., Texas Pipeline Co., Citgo Petroleum Corporation, Cotton Petroleum Corp., United Crude Marketing & Transportation, Inc., and Exxon Company USA, hereinafter sometimes referred to as "Plaintiffs" and Ann W. Richards, State Treasurer of the State of Texas and Jim Mattox, Attorney General of the State of Texas, hereinafter sometimes referred to as "Defendants":



FACTS UNDERLYING THE SETTLEMENT

All Plaintiffs are subject to the continuing reporting and remitting requirements of the 1985 Amendments to the Texas Unclaimed Property law. See, Exhibit "A" attached hereto.

Plaintiffs have brought the above entitled and numbered cause challenging the validity of the 1985 Amendments. Defendants have answered this cause asserting the validity of all of the statute's provisions. A major goal of the Defendants is to ensure that unclaimed property to which Texas is entitled under current case law (see, particularly Texas v. New Jersey, 379 U.S. 674 (1965)) is in fact reported and remitted to the State of Texas. All parties agree that serious, substantial, difficult and doubtful questions exist between them. All parties desire that all issues of fact and law and all things in controversy between them be fully and finally compromised and settled.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, including the factual recitals set forth hereinabove, ~~the parties agree as follows:~~ the

1. The Final Judgment attached hereto as Exhibit "B" shall be presented to the Court as an Agreed Judgment and shall be entered of record.
2. The following information is not required to be included in the Property Reports of the named Plaintiffs. The named Plaintiffs are also excused from remitting to the State of Texas the following property (or sums of money equivalent to same).
  - a) Proceeds and property as to which a last-known address of the person entitled thereto is shown on the books and records of the Plaintiffs to be in a state other than Texas;

**REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES**

- b) For Plaintiffs whose state of incorporation is not Texas, proceeds and property as to which there is no address of the person entitled thereto shown on the books and records of the Plaintiffs; and
- c) For Plaintiffs whose state of incorporation is not Texas, proceeds and property as to which the last-known address of the person entitled thereto as shown on the books and records of the Plaintiffs is in a state, the laws of which do not provide for the escheat of such property.

Defendants agree to a permanent injunction, subject to the terms of this agreement, enjoining them from taking any enforcement action against Plaintiffs for failing to report and remit the above described items of unclaimed property.

This agreement by the Defendants is not an admission that any aspect of the 1985 Amendments to the Texas Unclaimed Property Law violate any aspect of the United States or of the Texas Constitutions and is made only to settle this litigation, to avoid the expense and uncertainty of litigation, and to maximize compliance with the Texas Unclaimed Property law by these Plaintiffs.

If the rule of law set out in Texas v. New Jersey, 379 U.S. 674 (1965), is modified or altered by the Supreme Court of the United States or the United States Congress then the parties will conform this agreement in accordance with such new rule of law.

3. It is the Plaintiffs' position that the Texas statute of limitations bars the State from claiming any debts accrued prior to May 1, 1982, four years prior to the remittance date under the 1985 amendments to the escheat statute. While not waiving this position for any other purpose, Plaintiffs will report and remit to the State all sums accrued since the date indicated next to each Plaintiff's name below that are due and owing to claimants with a last known address in Texas and that have

**REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES**

been unclaimed for at least three years as of June 30, 1985.

Getty Oil Co., a Delaware corporation	9-1-80
Mitchell Energy Corp., a Delaware corporation	9-1-80
Apache Corp., a Delaware corporation	9-1-80
Apache Petroleum Company, a limited partnership	9-1-80
Atlantic Richfield Co., a Delaware corporation	9-1-80
Conoco Inc., a Delaware corporation	9-1-80
Champlin Petroleum Co., a Delaware corporation	9-1-80
Fina Oil & Chemical Co., a Delaware corporation	9-1-80
Texaco Inc., a Delaware corporation	9-1-80
Grace Petroleum Corp., a Delaware corporation	9-1-80
Mobil Oil Corp., a New York corporation	9-1-79
Pride Pipeline Co., a Texas corporation	9-1-80
Pride Pipeline Ltd. Partnership (dba Pride Pipeline Co.), an Oklahoma limited partnership	9-1-80 <del>9-1-75</del>
The Coastal Corp., a Delaware corporation	9-1-80
Amoco Production Co., a Delaware corporation	9-1-80
Scurlock Oil Co., a Kentucky corporation	9-1-80
Ashland Oil, Inc., a Kentucky corporation	9-1-80
TXO Production Corp., a Delaware corporation	9-1-80
Union Oil Co. of California, a California corp. (Including Unocal Corporation, a Delaware corporation, and Union Exploration Partners, Ltd., a Texas limited partnership)	9-1-78
Tesoro Petroleum Corp., a Delaware corporation	9-1-80
The Permian Corp., a Texas corporation	9-1-80
Texas Oil & Gas Corp., a Delaware corporation	9-1-80
Phillips Petroleum Co., a Delaware corporation	9-1-80

**REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES**

Texas Intl. Petroleum Corp., a Delaware corp.	9-1-80
Phoenix Resources Co., a Maine corporation	9-1-80
JM Petroleum Corp., a Texas corporation	9-1-80
The Texas Pipeline Co., a Delaware corporation	9-1-80
Citgo Petroleum Corp., a Delaware corporation	9-1-80
Cotton Petroleum Corp., a Delaware corporation	9-1-80
United Crude Mkt. & Transp., Inc., a Delaware corp.	9-1-80
Exxon Co. U.S.A., a New Jersey corporation	9-1-80

In return Defendants agree never to assert a claim against Plaintiffs for debts accrued prior to the date indicated nor require reporting of any such debts.

It is agreed that Defendants will not audit Plaintiffs for the handling of unclaimed mineral proceeds debts accrued prior to September 1, 1980.

4. The terms "producers" and "operators" as used herein refer to persons or entities that have an ownership interest in the mineral fee estate underlying the mineral proceeds at issue whether such ownership derives from the original lease, a subsequent assignment or other conveyance, and includes any mineral interest owner who is a participant in an operating agreement. The term "purchasers" as used herein refer to persons or entities that are parties to transactions involving the mineral proceeds and that do not own all or a part of the underlying mineral fee. For any wells for which Plaintiffs act as "producers" or "operators" as defined above, they will remit to the State, mineral proceeds payable by the Plaintiffs and attributable to an obligation to pay arising from the ownership of a mineral interest whether such mineral interest is a royalty interest, a working interest, a joint operating interest or any other

**REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES**

Interest which entitles an absent owner to receive some portion of current production/proceeds from the mineral estate, in accordance with Chapter 75 of the Act which, Plaintiffs agree for purposes of this agreement, requires payment on a "current basis". With respect to wells from which Plaintiffs are "purchasers" as defined above, mineral proceeds which are payable by Plaintiffs and which are not attributable to an obligation to pay arising from the ownership of a mineral interest, and only in that event, would not be remitted to the State on a "current basis". These mineral proceeds will be promptly reported and remitted to the State at the time they are deemed abandoned and otherwise subject to the Act. Should the Act be amended or judicially construed, both parties will be bound by the Act's language, as amended or construed.

"Current basis" means that Plaintiffs shall remit unclaimed mineral proceeds to the State as they become due once proceeds from that account have become deemed abandoned under Chapter 75 of the Act, such remittances to be made monthly, quarterly, semi-annually, annually, or as specified in Treasury regulations at the option of the Plaintiffs. Plaintiffs may make such adjustments and off-sets from time to time in the same manner as if the State was a royalty or other interest holder.

5. Plaintiffs shall report and remit on or before August 28, 1986 in a manner consistent with this agreement all unclaimed property due to be remitted on May 1, 1986 pursuant to the Act. For purposes of this paragraph only, "remit" is defined as actual receipt by the Treasury.

The Plaintiffs, except for the items expressly excused herein, will file, for this year and each succeeding year, full and complete reports and remittances of unclaimed property with the Texas State Treasurer, more specifically, Plaintiffs' reports shall be completed in the manner

**REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES**

described in the Texas State Treasurer's reporting instructions for the particular report year; the 1985 report instructions are attached hereto as Exhibit "C" and incorporated herein by reference for all purposes.

6. The parties agree that this agreement shall be incorporated by reference into a Final Judgment of the United States District Court, Southern District of Texas, Corpus Christi Division and shall be enforceable by the parties against one another as if this agreement were a verbatim part of the Final Judgment.

7. It is understood and agreed that this agreement shall be binding upon and inure to the benefit of the parties (including Plaintiffs' subsidiary and parent companies) and their respective representatives, successors, and assigns. Should any Plaintiff acquire another entity or should any Plaintiff be acquired by another entity, the acquiring or acquired entity shall have the option (a) to join this agreement or (b) not to join this agreement but continue the Plaintiff as a party to this agreement.

8. It is understood and agreed that this agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this agreement exist. This agreement cannot be changed or terminated orally.

9. It is understood and agreed that this is a compromise of a doubtful and disputed claim, and that nothing contained herein shall be construed as an admission of liability by or on behalf of Defendants, all such liability being expressly denied.

**REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES**

10. It is understood and agreed that this agreement shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas.

11. It is understood and agreed that this agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

12. The individual signing this agreement on behalf of each corporate Plaintiff represents that he/she has full authority to act on behalf of said corporate Plaintiff in executing this agreement.

In Witness Whereof, the parties have affixed their signatures to this agreement on various dates effective January 9, 1986.

REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES

ANN W. RICHARDS  
State Treasurer of the  
State of Texas

By: 

JIM MATTOX  
Attorney General of Texas

By: 

MITCHELL ENERGY CORPORATION

By:  *MF*



## EXHIBIT 6: Unclaimed Mineral Property Claimed by Owners

PROP_PROP	PROP_PROP	PROP_NM_F	PROP_NM_LAST	PROP_TITLE	PROP_STR1	PROP_STR2	PROP_STR3	PROP_CITY	PROP_STATE	PROP_ZIP1	PROP_ZIP2	PROP_CNTR	PROP_BRTH	SSN
MI	02	JOSEPHINE SOL	VILLERE	DECD					TX	00000	0000		4/8/1909	0
MP	02		THE WOLF CORPORATION							00000	0000			0
MI	02	CHARLENE M	FIELDS						TX	00000	0000			0
MI	02		BAY ROYALTY COMPANY					AMARILLO	TX	00000	0000	USA		0
MI	02	A D	LEE							00000	0000			0
MI	05		HIGHLANDS ENERGY GRP							00000	0000			0
MI	01		AMOCO SANTA RE ENERGY						TX	88888	0000			0
MI	53		J DOUGLAS SMYTH REV LIV TR							00000	0000	USA		0
MI	02	A B	LEATHERWOOD						TX	00000	0000			0
MI	01	HORACE H	ALVORD III							00000	0000			0
MI	02		OLD OCEAN ROYALTY OWNERS							00000	0000			0
MI	02	CHARLES M	PETTY JR						TX	00000	0000			0
MI	02	MOLLIE	THOMPSON						TX	00000	0000			0
MI	02		ANALCO INC						TX	00000	0000			0
MP	02		BRAZOS OIL & GAS CO							00000	0000			0
MI	03		BECKHAM & THOMAS TRUST							00000	0000			0
MI	02	JEROME J	OBRIEN						TX	00000	0000			0
MP	01	ELMER E	HOUSE							00000	0000			0
MI	01	LORNA D	TAYLOR							00000	0000			0
MI	02	PAULINE	WORMSER	HEIRS				AUSTIN	TX	78701	0000			0
MI	03		LADD PETROLEUM CORPORATION							00000	0000			0
MI	02	JEAN ELLIOTT	BURTON						TX	00000	0000			0
MI	01	MELISSA	LOCKHAR							00000	0000			0
MI	02	MICHAEL	RANDALL							00000	0000			0
MI	02		HOUSTON ROYALTY COMPANY						TX	00000	0000			0
MI	01	TED M/MARY J	WHITE						TX	00000	0000			0
MI	02	J T	CLINKSCALES							00000	0000			0
MI	01	EDITH	HOGG						TX	00000	0000			0
MI	02	J A	LEONARD					ROUND ROCK	TX	78680	0000	USA		0
MI	01	PROD CO	BONANZA							00000	0000			0
MI	01		TERRA RESOURCES							00000	0000			0
MI	04	DINAH	GRILLETTE							00000	0000			0
MP	02	DAN	AULD							00000	0000			0
MI	02	MANNING P	BILLEAUD							00000	0000			0
MI	01		NEWMONT OIL COMPANY							00000	0000			0
MI	02	FRED S	RICE						TX	00000	0000			0
MI	01	G E	HUBBARD							00000	0000			0
MI	02		REED COMPANY						TX	00000	0000			0

Exhibit 6: The screenshot above is from a live view of the Comptroller's unclaimed property database. The properties listed are a small sampling of more than 28,000 mineral proceeds properties that have been paid that were originally reported with no last-known address and no SSN. This was shown briefly at the Commission's April 2014 hearing.

## **EXHIBIT 7: Proof of Ownership Requirements**

### **Original Owner Claims**

If you are the reported owner of the property, you will file an Original Owner claim form. Please complete, sign and mail the form with the following documentation:

- Photocopy of your driver's license or other photo identification
- Proof of your social security number. If the reporting company provided a social security number it might be the only information we have to determine rightful ownership and it is required to issue payment. Photocopies of the following are acceptable:
  - social security card
  - tax record
  - school record
  - military identification card
  - pay stub\*
  - insurance identification card

**Note:** If there is an additional owner of the property listed on the claim form, provide the above identification for that person as well.

- Proof associating you with the last known address provided to us by the reporting company. If the reporting company provided a last known address it might be the only information we have to determine rightful ownership. Photocopies of the following are acceptable:
  - utility bill
  - mortgage payment coupon
  - post-marked envelope
  - driver's license
  - cancelled check
  - birth certificate
  - report card
  - credit report
  - pay stub\*
- Proof of business dealings between you and the reporting company. If the reporting company did not provide a social security number or last known address, this may be the only information we have to determine rightful ownership. Photocopies of the following are acceptable:
  - insurance policy
  - contract
  - invoice
  - receipt
  - money order
  - delivery confirmation

- original uncashed check
- gift certificate
- front and back side of a cleared check
- account statement
- bank book
- original safe deposit box key
- mineral property division order
- court document or;
- stock certificate

**Note:** If the property involves a cashier's check, money order, stock, bonds, or coupons, we may require the original instrument to process your claim. These items have been cancelled by the reporting company and need to be taken out of circulation. If you do not have the originals, you will receive additional instructions upon review of your claim.

Please complete, sign and return the claim form with a copy of your identification even if you are unable to provide all requested documents. In some cases we are able to determine ownership based on the available information you are able to provide.

\*The pay stub must reflect the last known address associated with the property.

## **General Claims**

If you are claiming property listed under a name other than your own you will file a General claim form. Please complete, sign and mail the form with the following documentation:

- Photocopy of **your** driver's license or other photo identification
- Proof of your social security number is required to issue payment. Photocopies of the following are acceptable:
  - social security card
  - tax record
  - school record
  - military identification card
  - pay stub or;
  - insurance identification card

In addition to providing your identification you will need to provide proof of the following **on the reported property owner**:

- Proof of **reported property owner**' social security number. If the reporting company provided a social security number, it might be the only information we have to determine rightful ownership and it may be required to issue payment. Photocopies of the following are acceptable:
  - social security card
  - tax record
  - school record

- military identification card
- pay stub\*
- insurance identification card.

**Note:** If the reported owner is deceased, the social security number may be on the death certificate.

- If there is an **additional owner** of the property listed on the claim form, provide the above identification for that person as well and a notarized statement from the additional owner, relinquishing his or her rights to the property.
- Proof associating the **reported property owner** with the last known address provided to us by the reporting company. If the reporting company provided a last known address, it might be the only information we have to determine rightful ownership and it may be required to issue payment. Photocopies of the following are acceptable:
  - utility bill
  - mortgage payment coupon
  - post-marked envelope
  - driver's license
  - cancelled check
  - birth certificate
  - report card
  - credit report
  - pay stub\*
- Proof of business dealings between the **reported property owner** and the reporting company. If the reporting company did not provide a social security number or last known address, this may be the only information we have to determine rightful ownership. Photocopies of the following are acceptable:
  - insurance policy
  - contract, invoice
  - receipt
  - money order
  - original uncashed check
  - front and back side of a cleared check
  - gift certificate
  - account statement
  - bank book
  - original safe deposit box key
  - mineral property division order
  - court document
  - stock certificate.

**Note:** If the property involves a cashier's check, money order, stock, bonds, or coupons, we may require the original instrument to process your claim. These items have been cancelled by the reporting company and need to be taken out of circulation. If you do not have the originals, you will receive additional instructions upon review of your claim.

\*The pay stub must reflect the last known address associated with the property.

## Additional Documentation

Additional documentation is required depending on your relationship to the reported property owner and to further support your authority to claim this property on their behalf or as an heir. Please refer to the information below that applies to your capacity:

### Parent/Custodian:

- if the reported property owner is currently **under 18** years of age, provide a copy of the child's birth certificate and proof of his/her social security number
- if the reported property owner is currently **18 years of age or older**, provide a copy of his/her photo identification and proof of social security number
- if the reported property owner is **deceased**, **provide a** copy of the death certificate (certified copy required if claim is \$5,000 and more)

**Note:** If the child is 18 years old or older, payment will be made to the child.

### Court Appointed Guardian:

Provide a complete copy of current Letters of Guardianship **and** a copy of photo identification for the individual for whom you are guardian. Letters of guardianship are executed by the court appointing you as Guardian. Your authority must not be expired or expire during the claim verification or payment process.

### Heir:

Provide a certified copy of the reported owner's death certificate (certified copy required if claim is \$5,000 and more), proof of social security number (if not listed on the death certificate), and the following:

- **If the deceased owner left a will that was probated**, provide a complete copy of either:
  - the will **and** the Order Admitting to Probate, or
  - the will **and** the Order Admitting Will to Probate as Muniment of Title

If the estate has been closed, please provide a copy of the court documents verifying final closing and distribution for the estate in addition to the copy of the probated will.

If submitting copies of the Order Admitting Will to Probate as Muniment of Title you **MUST** also provide a copy of the will. If the estate has been closed, please provide a copy of the court documents verifying final closing and distribution for the estate in addition to the copy of the will.

- **If the deceased owner did not leave a will or the will was not probated**, the required heirship documentation is based on the total value of your claim.

- A total claim value that is **\$5,000 or less** requires a notarized Affidavit of Heirship completed in its entirety by a third disinterested party (someone other than an heir). You may download, print and mail a completed [Affidavit of Heirship \(53-111-b\) \(PDF, 59k\)](#) with your claim.
- A total claim value that is **\$5,001 through \$10,000** requires a notarized Affidavit of Heirship, completed in its entirety by a third disinterested party (someone other than an heir). The completed Affidavit of Heirship must be filed in the county in which the reported owner lived and died. You may download, print and mail a completed, filed [Affidavit of Heirship \(53-111-a\) \(PDF, 63k\)](#) with your claim.
- A total claim value that is **more than \$10,000** requires a Court's Determination of Heirship or a Small Estates Affidavit of Heirship; both documents require a judge's signature. You will receive further instructions during the claim process if this document is required.

**Note:** Upon receipt and review of your claim, should the total value increase, the required documentation will change based on the above criteria, and you will receive further instructions during the claim process.

#### **Administrator:**

Provide a copy of the reported owner's death certificate (certified copy required if claim is \$5,000 and more), proof of social security number (if not listed on death certificate) **and** current Letters of Administration. Letters of Administration are executed by the court appointing you as Administrator of the estate. Letters can be dated no earlier than 90 days before the date the claim is filed if the dollar value of the unclaimed property claim is more than \$25,000. If the claim is \$25,000 or less, the letters can be up to 18 months old.

#### **Executor:**

Provide a copy of the reported owner's death certificate (certified copy required if claim is \$5,000 and more), proof of social security number (if not listed on death certificate) **and** current Letters Testamentary. Letters can be dated no earlier than 90 days before the date the claim is filed if the dollar value of the unclaimed property claim is more than \$25,000. If the claim is \$25,000 or less, the letters can be up to 18 months old.

#### **Trustee:**

Provide a copy of the reported owner's death certificate (if applicable and a certified copy is required if claim is \$5,000 and more), a complete copy of the Trust Agreement, proof of the Trust tax identification number and:

- If the Trust is still in effect, provide a copy of the current Trustee's driver's license.
- If the Trust has terminated, provide copies of driver's licenses and proof of social security numbers for all Trust beneficiaries.

## Where Do You Get Copies of the Following Documents?

- Death Certificate/Birth Certificate: [Texas Bureau of Vital Statistics](#) - (512) 458-7111.
- Probated Will: [County Clerks](#)
- Letters of Administration: [County Clerks](#)
- Letters Testamentary: [County Clerks](#)
- Letters of Guardianship: [County Clerks](#)

## Business Claims

If you are an officer or other company official claiming on behalf of a corporation, partnership, sole proprietorship, professional association, non-profit organization, or private organization, you will file a Business claim form. Please complete, sign and mail the form with the following documentation:

- Proof of your authority to act on behalf of the business. Photocopies of the following are acceptable:
  - corporate resolution
  - minutes from a meeting
  - franchise tax report
  - income tax return
  - recent annual statement
  - assumed name certificate
  - partnership agreement
  - sales tax permit
  - notarized affidavit signed by a financial officer
- Proof of the business' taxpayer identification number (federal employer identification number for a corporation or social security number for a sole proprietorship or partnership). If the reporting company provided a taxpayer identification number it might be the only information we have to determine rightful ownership and is required to issue payment. Photocopies of the following are acceptable:
  - franchise tax report
  - income tax return
  - sales tax permit
  - W-9
- Proof associating the business with the last known address provided to us by the reporting company. If the reporting company provided a last known address it might be the only information we have to determine rightful ownership. Photocopies of the following are acceptable:
  - utility bill
  - title

- post-marked envelope
  - insurance policy
  - contract, invoice
  - receipt
  - money order
  - original uncashed check
  - front and back side of a cleared check
  - gift certificate
  - account statement
  - bank book
  - original safe deposit box key
  - mineral property division order
  - court document
- Proof of business dealings with the reporting company. If the reporting company did not provide a taxpayer identification number or last known address, proof of business dealings may be the only information we have to determine rightful ownership. Photocopies of the following are acceptable:
    - insurance policy
    - contract
    - invoice
    - receipt
    - money order
    - front and back side of a cleared check
    - original uncashed check
    - gift certificate
    - account statement
    - bank book
    - original safe deposit box key
    - mineral property division order
    - court document
    - stock certificate

If the business was purchased or sold, attach a copy of the Buy/Sell Agreement.

If the business experienced a name change, merger, or has an assumed name (d.b.a. or "doing business as"), attach a copy of the Change of Name Amendment or Assumed Name Certificate.

If the business is no longer in existence, attach a copy of the Articles of Dissolution (including Attachment A) or Corporate Liquidation form filed with the IRS.

**Note:** If the property involves a cashier's check, money order, stock, bonds, or coupons, we may require the original instrument to process your claim. These items have been cancelled by the reporting company and need to be taken out of circulation. If you do not have the originals, you will receive additional instructions upon review of your claim.



Please complete, sign and return the claim form with a copy of your identification even if you are unable to provide all requested documents. In some cases we are able to determine ownership based on the available information you are able to provide.

## EXHIBIT 8: Unclaimed Property Fiscal Overview

### COMPTROLLER OF PUBLIC ACCOUNTS

(Continued)

- b. Statistical disparities by race, ethnicity and gender classification in the private marketplace, particularly in the area of utilization of women- and minority-owned firms in commercial construction;
- c. Statistical disparities in firm earnings by race, ethnicity and gender classification;
- d. Anecdotal testimony of disparate treatment as presented by business owners in interviews, surveys, public hearings and focus groups;
- e. Details of the agency's outreach plan; and
- f. Proper staffing of the agency's HUB department.

The agency or institution shall also provide quarterly reports to the Legislative Budget Board and Comptroller of Public Accounts on the status of implementation of the plan described herein.

19. **Unclaimed Property Held in Another State.** Using amounts appropriated above, the Comptroller of Public Accounts to the extent authorized by law may take any necessary actions to have unclaimed property in the custody or possession of another state or a person residing in another state delivered to the Comptroller to be held in the custody of this state to pay the claims of persons in this state who establish ownership of the property.
20. **Restructure Salary Rates.** Included in amounts appropriated above in Strategy A.2.1, Tax Laws Compliance, is \$3,881,400 in General Revenue in each fiscal year of the 2014-15 biennium for the purpose of restructuring salary rates for enforcement staff. The Comptroller estimates additional General Revenue of \$7,762,800 for the biennium will be available as a result of the restructured salary plans.
21. **Statewide Procurement Fees.**<sup>5</sup> The Comptroller of Public Accounts is hereby appropriated from statewide procurement fees assessed under Chapter 2101, Government Code, all sums necessary to perform statutory obligations under Chapter 2101, Government Code. Such amounts shall not exceed the amount of money credited to General Revenue from statewide procurement proceeds.

<sup>1</sup> Incorporates Article IX, §18.12, of this Act, due to enactment of HB 800, 83rd Legislature, Regular Session, relating to a sales and use tax exemption and a franchise tax credit related to certain research and development activities, resulting in increases of \$6,339,000 out of General Revenue funds and 20.0 FTEs each fiscal year of the biennium.

<sup>2</sup> Incorporates Article IX, §18.29, of this Act, due to enactment of HB 3572, 83rd Legislature, Regular Session, relating to a reduction of the rate of the mixed beverage tax and creation of a mixed beverage sales tax, resulting in increases of \$612,500 in FY 2014 and \$612,500 in FY 2015 out of General Revenue funds and increases of 10.5 FTEs in FY 2014 and 19.5 FTEs in FY 2015.

<sup>3</sup> Incorporates Article IX, §18.20, of this Act, due to enactment of HB 1965, 83rd Legislature, Regular Session, relating to the state contracting duties of the Quality Assurance Team and Contract Advisory Team, resulting in increases of \$80,000 out of General Revenue funds and 1.0 FTE each fiscal year of the biennium.

<sup>4</sup> HB 2472, 83rd Legislature, Regular Session, passed and continues statewide procurement and related support functions at the agency until September 1, 2021.

<sup>5</sup> Incorporates Article IX, §18.26, of this Act, due to enactment of HB 3116, 83rd Legislature, Regular Session, relating to the assessment of statewide procurement fees under Chapter 2101, Government Code.

## FISCAL PROGRAMS - COMPTROLLER OF PUBLIC ACCOUNTS

	For the Years Ending	
	August 31, <u>2014</u>	August 31, <u>2015</u>
<b>Method of Financing:</b>		
General Revenue Fund <sup>1</sup>	\$ 365,914,864	\$ 356,987,802
<u>General Revenue Fund - Dedicated</u>		
Texas Department of Insurance Operating Fund Account No. 036	0	10,000,000
Law Enforcement Officer Standards and Education Account No. 116	6,000,000	6,000,000
Compensation to Victims of Crime Auxiliary Account No. 494	30,000	UB
Oil Overcharge Account No. 5005	17,266,618	17,266,618
Subtotal, General Revenue Fund - Dedicated	<u>\$ 23,296,618</u>	<u>\$ 33,266,618</u>
Federal Funds	11,000,603	12,132,340

**FISCAL PROGRAMS - COMPTROLLER OF PUBLIC ACCOUNTS**  
(Continued)

County and Road District Highway Fund No. 0057	7,529,119	7,300,000
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<b>Total, Method of Financing</b>	<b>\$ 407,741,204</b>	<b>\$ 409,686,760</b>
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This bill pattern represents an estimated 24.6% of this agency's estimated total available funds for the biennium.

<b>Number of Full-Time-Equivalents (FTE):</b>	25.0	25.0
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**Items of Appropriation:**

**A. Goal: CPA - FISCAL PROGRAMS**

**Comptroller of Public Accounts - Fiscal Programs.**

<b>A.1.1. Strategy: MISCELLANEOUS CLAIMS</b>	\$ 14,860,294	\$ 14,860,294
Pay misc claims/wrongful imprisonment, Gov't Code 403.074. Estimated.		

<b>A.1.2. Strategy: REIMBURSE - BEVERAGE TAX</b>	\$ 149,456,000	\$ 157,840,000
Reimburse mix bev tax per Tax Code 183.051. Estimated.		

<b>A.1.3. Strategy: JUDGMENTS AND SETTLEMENTS</b>	\$ 2,500,000	\$ LB
Payment of Ch. 101, 104 CPR Code, Ch. 59 Educ Code. Fed Court Claims.		

<b>A.1.4. Strategy: COUNTY TAXES - UNIVERSITY</b>	\$ 3,778,752	\$ 3,967,690
Payment of County Taxes on University Lands. Estimated.		

<b>A.1.5. Strategy: LATERAL ROAD FUND DISTRICTS</b>	\$ 7,529,119	\$ 7,300,000
Lateral Road Fund Distribution.		

<b>A.1.6. Strategy: UNCLAIMED PROPERTY</b>	\$ 165,142,247	\$ 165,142,247
To Pay Legitimate Claims for Unclaimed Prop Held by State. Estimated.		

<b>A.1.7. Strategy: LOCAL CONTINUING EDUCATION GRANTS</b>	\$ 6,000,000	\$ 6,000,000
Allocate Local Continuing Education Grants.		

<b>A.1.8. Strategy: ADVANCED TAX COMPLIANCE</b>	\$ 7,115,574	\$ 7,115,574
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<b>A.1.9. Strategy: SUBSEQUENT CVC CLAIMS</b>	\$ 30,000	\$ LB
Subsequent Crime Victim Compensation Claims. Estimated.		

<b>A.1.10. Strategy: GROSS WEIGHT/AXLE FEE DISTRIBUTION</b>	\$ 7,500,000	\$ 7,500,000
Distribution to Counties per Transportation Code 621.353. Estimated.		

<b>A.1.11. Strategy: JOBS AND EDUCATION FOR</b>	\$ 10,000,000	\$ LB
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<b>A.1.12. Strategy: REIMBURSE GR FOR INS. TAX CREDITS</b>	\$ 0	\$ 10,000,000
Reimburse GR for Cost of Certain Insurance Tax Credits. Estimated.		

<b>A.1.13. Strategy: HABITAT PROTECTION FUND<sup>1</sup></b>	\$ 5,000,000	\$ LB
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<b>Total, Goal A: CPA - FISCAL PROGRAMS</b>	<b>\$ 378,911,986</b>	<b>\$ 379,725,805</b>
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**B. Goal: ENERGY OFFICE**

**Develop & Administer Programs That Promote Energy Efficiency.**

<b>B.1.1. Strategy: ENERGY OFFICE</b>	\$ 2,484,086	\$ 2,484,086
Promote and Manage Energy Programs.		

<b>B.1.2. Strategy: OIL OVERCHARGE SETTLEMENT FUNDS</b>	\$ 16,706,956	\$ 16,706,956
Allocate Grants and Loans to Promote Energy Efficiency.		

<b>B.1.3. Strategy: OTHER SEP FUNDS</b>	\$ 9,638,176	\$ 10,769,913
Other State Energy Program Funds.		

Total, Goal B: ENERGY OFFICE	\$	<u>28,829,218</u>	\$	<u>29,960,955</u>
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Grand Total, FISCAL PROGRAMS - COMPTROLLER OF PUBLIC ACCOUNTS	\$	<u>407,741,204</u>	\$	<u>409,686,760</u>
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Object-of-Expense Informational Listing:

Salaries and Wages	\$	982,600	\$	982,600
Other Personnel Costs		146,790		146,790
Professional Fees and Services		6,051,631		6,051,631
Consumable Supplies		825		825

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August 26, 2013

## EXHIBIT 9: Minority Recommendation Information

### **DETERMINING UNCLAIMED MINERAL PROCEEDS IN A NEW CONSTITUTIONAL SPECIAL LAND GRANT CLAIMS COURT WITH STATEWIDE JURISDICTION**

Often the need for specialized legal procedures arise over time because some needs producing them are initially undetermined or isolated receiving little attention, and secondly, existing forums are thought to be adequate for the volume and complexity of cases. However, time often changes the demands for the courts.

Issues revealed through months of testimony and discovery in The UMP Commission produced an understanding that the narrow charge creating this Commission found in H.B. 724 is being followed in large part by the Comptroller. A FEW CHANGES MAY BE ADVISABLE TO THE COMPTROLLER'S PROCEDURE IN THE STATUTORY REQUIREMENTS FOR UNCLAIMED MINERAL PROCEEDS as set out in H.B. 724. (See Summary Conclusions of Commission Report, Section C. Section E.)

For the most part the Comptroller has provided filing forms in unclaimed mineral proceeds which can be completed by individual applicants without the need for legal representation, provided correct proof is submitted. (See Summary Conclusions of Commission Report Section F, Section G.)

Although Oil and Gas Companies are generally complying with the rules and regulations, several adjustments in the law or procedures could benefit the process.

Admittedly beyond the scope of the specific H.B. 724 charge, there are obviously other needs--- which, in equity and fairness--- cry out for the establishment of a **single authority with plenary powers (not currently within the unclaimed and presumed abandoned authority of the Comptroller or other state agencies) that would** resolve legal and evidentiary problems in individual claim cases in a clear and concise manner, resulting in judgments for unsatisfied claims festering for years. Much testimony centered around mineral proceeds which have not been reported to the Comptroller. Some Oil & Gas Companies are slow about reporting.

The State of Texas can no longer ignore these claims.

The Legislative creation of a **SPECIAL CLAIMS COURT** dedicated to resolving the claims by proven descendants for unclaimed and presumed abandoned mineral proceeds not reported to the Comptroller needs to be studied. In a setting much like the trespass to try title action allowed in the District Courts of Texas, The Special Claims Court would center on 1) establishing ownership of mineral proceeds proven and 2) traced with legal certainty of uninterrupted title down and to descendants who have 3) proven their rightful heirship according established genealogical principles. This Court is authorized by the Texas Constitution, Article 5, Section 1, paragraph 2, which states:

*"The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto."*

The Special Claims Court would:

- a. Be a court of original, statewide jurisdiction.
- b. Sit in Cameron, Nueces, Travis, and Webb Counties (since the majority of the claims originated from the “Nueces Strip”).
- c. Consist of three Judges appointed for 6 year terms by the Governor.
- d. Terminate after the 12<sup>th</sup> year of existence.
- e. Be assisted by 8 Associate Judges appointed by the 3 judge Panel, who could recommend to the Three-Judge panel solutions that would resolve claims. (Anticipating that 2 Associate Judges would be assigned to each County where the Court sits.)
- f. Allow Associate Judges the power to issue subpoenas, hold hearings, mediate cases, and recommend to the Three Judge Panel decisions based upon their findings.
- g. Review with the help of Associate Judges, declaratory judgments previously secured within the state and other cases that impact on the specific claim.
- h. Have power and authority to adjudicate all matters pertaining to unclaimed mineral proceeds originating from Spanish, Mexican, Republic of Texas and Texas land grants by those persons claiming to be owners through descendants of any such mineral proceeds, and resolve claims as presented.
- i. Proscribe specific evidence necessary to the trial of a case using guidelines outlined by the Legislature.
- j. Issue final judgment awarding any unclaimed mineral proceeds or any mineral proceeds the subject of controversy, that were not reported to the comptroller, and awarding the monies due the claimant to be paid by funds held by the appropriate entity....whether it be a state or private one.
- k. Allow any decision to be appealed to the Texas Supreme Court, on specific points of law, provided the Texas Supreme Court approves the appeal.

To speed the final judgment along and diminish many similar claims, the Court through Associate Judges could adopt forms for sworn affidavits or questionnaires to be filed initially detailing the specific land grant, the questions of heirship, the title record, resolution of existence of mineral proceeds, as distinguished from mineral RIGHTS, upon a specific land grant.

Thus we leave the remainder of the evidence to be presented as directed by the Court, based upon the recognized principles and rules of evidence coupled with accepted procedural rules. So, all facts upon which any judgment is based would be resolved in Court, hopefully upon evidence that is specific to the subject claim. But an appeal would be possible to Texas Supreme Court based upon any legal issues raised.

Why is this procedure more preferable than that found in District Courts? Unlike today, this manner is not piecemeal. It continues the existing procedure as maintained by the Comptroller. But, for other claims not within the Comptroller's charge, brings together all evidence, and all claims in one united place, fosters credibility in the court with judges who hopefully when appointed are familiar with the specific law, and places a finality on the questions raised in each individual case. We do not have that today, but rather we have continued claims by multiple ancestors over the years without resolution.